165-394

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1896.

No. 78.

AUGUSTA P. GLOVER AND JOHN M. GLOVER,
APPELLANTS,

vs.

MARY E. PATTEN, JOSEPHINE A. PATTEN, EDITH PATTEN, AND HELEN PATTEN.

APPEAL FROM THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA.

FILED MARCH 12, 1894.

(15,527.)

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1 Court of Appeals of the District of Columbia, November Term, 1893.

MARY E. PATTEN, JOSEPHINE A. PATTEN, EDITH PATTEN, and HELEN PATTEN, Complainants,
vs.
AUGUSTA P. GLOVER and JOHN M. GLOVER. } No. 94.

Transferred from the supreme court of the District of Columbia

2 In the Supreme Court of the District of Columbia.

Original Bill of Complaint. Filed Jan. 8, 1890.

MARY E. PATTEN, JOSEPHINE A. PATTEN, Edith Patten, and Helen Patten, Complainants,
against
AUGUSTA P. GLOVER, Defendant. } In Equiy. No. 12234.

The complainants state as follows:

First. That they are residents of the District of Columbia and bring this suit in their own right.

Second. That the defendant, Augusta P. Glover, who is the wife of John M. Glover, is a resident of the State of Missouri, but is now commorant with her said husband in the District of Columbia, and is sued in her own right and as an executrix of the estate of Anastasia Patten, late of the District of Columbia, deceased, as hereinafter more fully appears.

Third. That on, to wit, the eleventh day of September, A. D. 1888, the said Anastasia Patten, late a resident of said District, departed this life, having previously made, published, and declared a paper-writing as and for her last will and testament, a true copy whereof, marked Exhibit A, is hereto annexed and prayed to be taken as part hereof; that, as appears on its face, said last will and testament was duly executed to pass personal estate, but was not so executed as to pass real estate in the District of Columbia, by reason whereof the said Anastasia Patten, as to such real estate, died intestate; that all the real estate owned and possessed by said Anastasia Patten at the time of her death is situate in the District of Columbia, except a part of one tract thereof, which said tract lies in part in said District of Columbia and in part in the State of Maryland, and that the said last will and testament of said Anastasia Patten was so executed as to pass so much of said real estate as lies in said State of Maryland.

Fourth. That the complainants and the defendant are the only children, heirs-at-law, and next of kin of said testatrix.

Fifth. That in and by said last will and testament aforesaid the complainants and the defendant are duly appointed and constituted as the executrices thereof; that they have duly qualified as such ex-

ecutrices and are now engaged as such in the administration of the estate of said testatrix, and that, as appears by the inventory of said estate heretofore returned and now on file among the records of this court, the personal estate of said testatrix exceeds in amount the sum of five hundred thousand dollars.

3 Sixth. That in her lifetime the said testatrix was indebted to the complainants and the defendant under the circumstances and in the manner following: As children of Edmund Patten, late the husband of said testatrix, the complainants and the defendant inherited from their said father an estate, which estate was received, administered upon, and retained by said testatrix as their guardian, and on, to wit, the — day of September, A. D. 1885, the amount of indebtedness of said testatrix in the premises on account of the estate aforesaid was adjusted, settled, and determined by mutual agreement of the said testatrix on the one part and on the other the complainants and the defendant (then Katherine Augusta Patten), except the complainant Helen Patten, who did not unite therein because, although she was at the time above the age of sixteen years, she yet was within the age of twenty-one years and was thought incompetent so to do; which said agreement was duly signed and executed by the complainants and the defendant, except said complainant Helen, and is in the words and figures following, to wit:

"Whereas our mother, Anastasia Patten, as guardian for us, received in the years 1873, '4, '5 certain amounts of money, being our portion by inheritance of the estate of our deceased father; and

Whereas no special separate investments of the money so received have been made by our said guardian, but the same has been by her kept and safely invested in connection with moneys belonging to her in her own right derived from the said estate; and

Whereas our said guardian has up to the present date had entire charge of our maintenance and education and has during the past thirteen years incurred a large amount of family expenses for our benefit, of which expenses no account has been kept by her; and

Whereas we and our said guardian are now desirous of settling the account between us in a just and equitable manner without attempting to secure technical accuracy in such settlement; and

Whereas our said mother and guardian has submitted to us for inspection all accounts and papers in her possession touching or relating to the receipts and disbursements entering into such accounting and we have personally general knowledge concerning the family expenses during said period; and

Whereas from such examination and knowledge we believe that by a payment to each of us by our said guardian of the sum of $101,600 an equitable settlement will be made and full justice done to each of us:

Now, therefore, each of us for herself agrees to accept the said sum of $101,600 in full and complete settlement of all accounts, claims, and demands between us and each of us and our said mother and guardian and in full satisfaction of all claims and

demands of whatever character arising out of or connected with the administration of said estate or the said relation of guardian and ward, and each of us for herself authorizes and requests that upon presentation of this agreement and a receipt for the above amount the court having jurisdiction thereof will without further investigation of accounts, so far as they concern either of us, pass the final accounts of our mother as administratrix and guardian and by proper decree discharge those liable as bondsmen for her action in either capacity.

(Signed) MARY ELLEN PATTEN.
KATHERINE AUGUSTA PATTEN.
JOSEPHINE ANTOINETTE PATTEN.
EDITH PATTEN."

That the complainant Helen Patten, being fully advised in the premises, now adopts and accepts said adjustment, settlement, and determination aforesaid as though she had duly participated in the same at the time of the making thereof, and that by virtue of the premises the said testatrix became and was indebted to each of the complainants and the defendant, as of the said — day of September, 1885, in the full sum of one hundred and one thousand six hundred dollars.

Seventh. That on, to wit, the seventeenth day of February, 1887, as of the first day of January, 1887, the said testatrix paid on account of her said indebtedness to the defendant (then Katherine Augusta Patten, as aforesaid,) the sum of, to wit, one hundred and two thousand eight hundred dollars, by assigning and transferring to her, the said defendant, bonds of the United States of the par value of eighty thousand dollars and of the actual value of, to wit, one hundred and two thousand eight hundred dollars, with benefit of the interest thereon since January 1, 1887; that afterwards, to wit, on the fifteenth day of October, 1887, the said testatrix paid to each of the complainants on account of the several indebtednesses to them aforesaid the sum of eleven thousand two hundred and fifty dollars, and that besides the payments hereinbefore mentioned and specified no other or further sum has been paid or secured to be paid to the complainants or the defendant on account of the several indebtednesses aforesaid.

Eighth. That by virtue of the premises the estate of the said testatrix now stands justly indebted to the complainants and the defendant to the extent hereinbefore indicated—that is to say, to the defendant in the sum of one hundred and one thousand six hundred dollars as of the — day of September, 1885, subject to a credit of one hundred and two thousand eight hundred dollars as of the first day of January, 1887, and to each of the complainants in the sum of one hundred and one thousand six hundred dollars as of said — day of September, 1885, subject to a credit of the fifteenth day of October, 1887, of eleven thousand two hundred and fifty dollars.

Ninth. That, as the complainants have been advised, they may not as executrices as aforesaid retain for their said claims against

said testatrix hereinbefore set forth unless the same be first passed by this court sitting as an orphans' court, and to that end they heretofore, to wit, on the tenth day of May, 1889, presented to this court, sitting as such orphans' court, their petition, duly setting forth the above-recited premises as to said indebtedness, and prayed the court to pass upon their said several claims and authorize the payment of the same, and that upon being duly summoned so to do the defendant made answer to said petition, the said petition and answer being hereby referred to and made part hereof as fully to all intents and purposes as though the same were herein at large set forth.

Tenth. That in and by her said answer to said petition aforesaid the defendant, admitting the inheritance by her and the complainants of the estate aforesaid from their said father, set forth and contended as follows:

That the said testatrix did become guardian of the complainants and defendant as alleged and did receive their said estate aforesaid as such guardian, but that said testatrix never formally settled her accounts as such guardian, she not having been called upon so to do; that the paper set forth in the sixth paragraph of this bill was drawn and signed in order to enable said testatrix formally to close her accounts as guardian as aforesaid, but that the amounts agreed by the terms of said paper to be accepted by the complainants and defendant were never paid nor was any evidence of indebtedness given to them or any of them, and that notwithstanding said paper the accounts of said testatrix, as guardian as aforesaid, remained open at the time of her death and the said estate of the complainants and the defendant was dealt with by said testatrix after the execution of said paper in the same manner as before the same was so as aforesaid drawn and signed, and that therefore, by reason of the circumstances, a trust existed on the part of the said testatrix towards the complainants and the defendant in respect of their said estate, and that the relation of said testatrix to the complainants and defendant was recognized and treated by her to the day of her death as that of trustee and *cestuis que trustent* and not of debtor and creditors; and in and by her said answer aforesaid the defendant further set forth and contended that by her said last will and testament the said testatrix devised, subject to certain bequests of comparative trifling amount, all her estate, real and personal, as well the estate of the defendant and the complainants so as aforesaid alleged to have been held in trust for them as her own estate, and that such devise operated the extinguishment, discharge, and payment of any claim upon the part of the complainants in the premises, and that their said claims aforesaid ceased to be provable as debts against the estate of said testatrix, and that such alleged extinguishment, discharge, and payment are not affected by the fact that the defendant and the complainants took title to the real estate of said testatrix by descent instead of by devise, in consequence of the insufficient execution of said last will and testament as aforesaid, and that the several indebtednesses alleged by these complainants

were never recognized or acted upon by said testatrix and no part payments were made by her on account thereof.

Eleventh. That upon consideration of the petition and answer aforesaid, on, to wit, the thirteenth day of June, 1889, the justice holding the special term of this court for orphans' court business adjudged and ordered that the said petition presented a subject-matter within the jurisdiction of said court so holding such term, but that the claims of the complainants could not be deter-
6 mined by said court so sitting without the determination of matters whereof said court in such session had not jurisdiction, such as the effect upon said claims of the said last will and testament of said testatrix, the payment to the defendant on account, as alleged and denied, and other matters it may be; wherefore further action upon said petition was by said justice suspended until said matters whereof said court so sitting as aforesaid had not jurisdiction should be first tried and determined in the appropriate tribunal in such manner as counsel might advise.

Twelfth. That the complainants being desirous that said matters as aforesaid may be tried and determined as in and by said order required, and being advised that said matters cannot otherwise be tried and determined than by this court sitting in equity, they therefore file this their bill of complaint to that end, and in that behalf they state further:

That at the time of making and signing the said paper, on the — day of September, 1885, in the sixth paragraph hereinbefore set forth, all of the complainants and the defendant, except the complainant Helen, were of full age, to wit, of the age of twenty-one years, and the said Helen was of full age so as to be entitled to receive her estate from said testatrix as her guardian, to wit, above the age of sixteen years; that by virtue of such the several ages of the complainants and the defendant they were and each of them was capable and entitled in law to have and receive from their said guardian their said estate as aforesaid, and it then was and for a long time theretofore had been the duty in law of said testatrix, guardian as aforesaid, to deliver to them and each of them their said estate as aforesaid, the same consisting, in contemplation of law, exclusively of money: that thereby the said testatrix, as guardian as aforesaid, was, and had therefore become in law, the debtor of the complainants and the defendant and each of them without regard to said paper so drawn and signed as aforesaid, and the said paper was only in law an adjustment, accounting, and settlement between the said testatrix, guardian as aforesaid, on the one part and the complainants and the defendant on the other, having for its object and purpose the ascertainment of the amount of indebtedness of the said testatrix to the complainants and the defendant and each of them; that the residuary devise and bequest to the complainants and defendant of said last will and testament of said testatrix, being in general terms and not of any specific property, estate, or amount, and having been made before said indebtednesses were ascertained, does not in law constitute such a devise and bequest as does or can operate a payment or discharge of said several

indebtednesses as aforesaid, and it was not the intention of said testatrix that the same should so operate; that even if the relation between said testatrix, guardian as aforesaid, on the one part and the complainants and the defendant on the other were not the relation of debtor and creditors, yet nevertheless the complainants and the defendant, being sole heirs-at-law, next of kin, and residuary devisees and legatees as aforesaid, now stand in place of said testatrix in respect of any liability to themselves on account of
7 any trust relation in which said testatrix may have stood to them, and so there can arise and be determined in the premises no question of trust or liability or obligation growing out of any supposed relation of trust, and that if the payment to said defendant of said seventeenth day of February, 1887, as hereinbefore set forth, was not a payment to said defendant on account of a then existing indebtedness to her, the same was and is in law an advancement to said defendant and is so to be treated in the execution of said last will and testament and the administration of the estate of said testatrix.

Wherefore, the premises considered, the complainants pray as follows:

1. That process may duly issue to the defendant requiring her to appear to and answer the exigency of this bill of complaint; but the complainants, conformably to equity rule No. 63 of this court, hereby expressly waive an answer by said defendant under oath, it being the purpose and intent of the complainants that the answer of the defendant shall not be evidence in her favor.

2. That the said last will and testament of said testatrix aforesaid may be construed by this court in view of its terms and provisions and the hereinbefore-recited facts and premises.

3. That the several respective rights, claims, and demands of the complainants and defendant in the premises may be adjudged and determined by this court.

4. And that the complainants may have such other and further relief in the premises as the nature of their case may require.

The defendant to this bill of complaint is Augusta Patten Glover.

HENRY E. DAVIS,
Solicitor for Complainants.

8 EXHIBIT A.

Last Will and Testament of Anastasia Patten.

I, Anastasia Patten widow, of the city and county of San Francisco being of sound and disposing mind, in view of the uncertainty of life do hereby revoke and cancel all former wills by me made and do hereby make, publish and declare this my last will and testament in manner following, that is to say:

First. I give, devise and bequeath to my children Mary E. Patten aged nineteen years, Augustus Patten aged eighteen years, Josephene A. Patten aged seventeen years, Edith Patten aged fifteen years and Nellie Patten aged eleven years, subject to the bequests

hereinafter mentioned all the property, real, personal and mixed of which I may be possessed or to which I may be entitled at the time of my death; to be divided between them share and share alike.

Second. In the event that any of my said children should die before this will goes into effect, leaving no issue then the share of such child shall be divided among my surviving children share and share alike.

Third. I direct that in the event of the marriage of any of my said children before this will goes into effect the distributive share of such child shall be absolutely free from all control of her husband.

Fourth. I direct that such United States bonds which I may have at the time of my decease shall be left intact and not be disposed of or hypothecated, but my said children shall have the interest which accrues thereon and divide the same share and share alike.

Fifth. I direct that my children who may be executors of this will shall in their business affairs connected with my estate advise with and be guided by the advice of my friend Simon W. Glazier, Esq., of the city and county of San Francisco.

Sixth. I bequeath to my brother, J. P. Flannery, of the town of Gold Hill, State of Nevada, the sum of twenty thousand dollars, also to my sister Mrs. Ellen Hamlin of the city and county of San Francisco the like sum of twenty thousand dollars, also to St. Mary's hospital of the city and county of San Francisco the sum of five thousand dollars to be used for the relief of the poor in said city and county.

Seventh. I nominate and appoint such of my children as may have attained the age of majority at the time of my death and who are not otherwise incapacitated from undertaking the trust as executors of this will and direct that no bond or undertaking shall be required to be given by them as such executors at any time during or for any purpose connected with the administration of my estate.

Eighth. I direct that those of my children who shall have attained the age of majority at the time of my death shall be the guardians of the persons and estate of those who remain minors at said time.

Witness my hand the 23d day of December, A. D., 1879.

(Signed) ANASTASIA PATTEN.

The foregoing instrument purporting to be the last will of Anastasia Patten widow, was on this twenty-third day of December, 1879, in presence of each of us subscribed by her and declared by her to be her last will and testament and we then and there in her presence and in the presence of each other and at her request have subscribed our names thereto as witnesses.

(Signed) PAUL NUMANN,
432 *Montg. Street, San Francisco.*

(Signed) S. W. GLAZIER,
412 *Cal. Street.*

9 (Endorsed:) Eq. No. 12234. Mary E. Patten *et al. vs.* Augusta P. Glover. Original bill to construe will, &c. H. E. Davis, sol'r. Filed Jan. 8, 1890. R. J. Meigs, clerk.

10 In the Supreme Court of the District of Columbia.

MARY E. PATTEN *et al.*, Complainants, *against* A. P. GLOVER, Defendant. } No. 12234, Equity Docket 30.

JANUARY 8TH, 1890.

The President of the United States to Augusta P. Glover, defendant:

You are hereby commanded to appear in this court at its first special term occurring ten days after service of this subpœna, and answer the exigency of the original bill, under pain of attachment and such other process of contempt as the court shall award.

Witness E. F. Bingham, chief justice.

[Seal of the Supreme Court of the District of Columbia.]

R. J. MEIGS, *Clerk, &c.*,
By R. J. MEIGS, JR., *Ass't Clerk.*

MEMORANDUM.—That the defendant herewith served is to enter her appearance in this suit in the clerk's office on or before the day at which this writ is returnable; otherwise the bill may be taken for confessed.

(Endorsed:) No. 12234, equity docket *eq.* 30. Spa. to ans. original bill. Mary E. Patten *vs.* Augusta P. Glover. Sub-
11 pœna to answer issued January 8, 1890. Returned January 18, 1890. Served Augusta P. Glover January 16, 1890. D. M. Ransdell, marshal. H. E. Davis.

12 Filed Mar. 4, 1890. R. J. Meigs, clerk.

MARY E. PATTEN *et al.* *vs.* AUGUSTA P. GLOVER. } No. 12234.

This cause coming on to be heard on the application of Augusta P. Glover for an extension of time to plead, answer, or demur to the bill of complaint, five days additional time is granted.

W. S. COX, *J.*

(Endorsed:) 12234. Patten *vs.* Glover. Order for additional time to plead, 5 days. Filed Mar. 4, 1890. R. J. Meigs, clerk.

13 *The Answer of Augusta P. Glover to Part of the Bill and Demurrer to Part of the Bill.*

Filed March 8, 1890. R. J. Meigs, clerk.

In the Supreme Court of the District of Columbia.

MARY E. PATTEN, JOSEPHINE A. PATTEN, Edith Patten, and Helen Patten, Plaintiffs, *vs.* AUGUSTA P. GLOVER, Defendant. } In Equity. No. 12234.

Now comes the said defendant, Augusta P. Glover, saving and reserving to herself all the benefits of all exceptions to the bill of complaint exhibited in this case on account of the many insufficiencies and imperfections thereof, and without waiving the same or any thereof, and asking that she may have the benefit thereof the same as if taken by demurrer, for her answer to the said bill says:

1, 2, 3, 4, 5. The defendant admits the averments of the first, second, third, fourth, and fifth paragraphs of the bill.

14 6. The defendant admits that as children of Edmund Patten, late the husband of the said Anastasia Patten, the complainants and defendant inherited from their said father an estate; that the said Anastasia Patten was appointed the administra*tor* of the said Edmund Patten, and as such received his estate; that she was also appointed guardian of the complainants and defendant. She further admits that she and the complainants, except Helen, signed the paper set out in full in said paragraph sixth, and that at the date thereof Helen was above the age of 16 years and under the age of 21 years, and that in her lifetime the said testatrix was indebted to the complainants and the defendant.

The remaining allegations of the paragraph she denies.

7. The defendant denies the averments of the 7th paragraph of the bill, except as to that portion which is covered by the demurrer incorporated in the 13th paragraph of this answer.

8. The defendant denies the averments of the 8th paragraph of the bill, except as to that portion which is covered by the demurrer incorporated in the 14th paragraph of this answer.

9. The defendant admits the averments of the 9th paragraph of the bill, except that she only admits the contents of the writings and records referred to as they shall truly appear on production of the originals.

10. The defendant admits the averments of the 10th paragraph of the bill, except that she says that the summary of her answer to the petition of plaintiffs in the orphans' court referred to in the said paragraph is garbled and incomplete, and she only admits the contents of the same as they shall truly appear on the production of the original.

11. The defendant admits the passing of the order referred to in paragraph 11th by the Hon. W. S. Cox, the justice holding the special term of this court for orphans' court business, on June 23, 1889, except that she admits the same only as the true tenor thereof shall appear on the production of the original, but she avers it to be in the words and figures following, to wit:

"The petition of Mary E. Patten, Josephine A. Patten, Edith Patten, and Helen Patten, with the answer thereto of Augusta P. Glover, in pursuance of the rule to show cause, now came on to be heard, and was argued by counsel and considered by the court; and it appearing to the court that said petition presents a subject-matter within the jurisdiction of the court, but that the claims of the petitioners cannot be determined by this court without the determination of matters whereof this court has not jurisdiction, such as the effect upon the said claims of the will of the testatrix, the payment to petitioners and respondent on account, as alleged and denied, and other matters, it may be, it is therefore ordered, adjudged, and decreed this 13th day of June, 1889, that further action upon the said petition be, and the same is hereby, suspended until said other matters, whereof this court has not jurisdiction, shall be first tried and determined in the appropriate tribunal in such manner as counsel may advise."

12. The defendant admits that at the time of making and
15 signing the said paper, on the — day of September, 1885, in the 6th paragraph of the bill set forth, the complainants and the defendant, except the complainant Helen, were of the age of 21 years, and that the said Helen was over the age of 16 years; that the devise and bequest to the complainants and defendant in the last will and testament of the said testatrix was residuary, but she denies the conclusion of law that the said bequest did not or could not operate as payment or discharge of all the several indebtednesses of the said Anastasia Patten to complainant, and she denies the other conclusions of law set out in said paragraph and all the other statements of law and fact comprised therein, except so much thereof touching an alleged advancement as is covered by the demurrer incorporated in the 15th paragraph of this answer.

13. The defendant demurs to so much of the bill (7th paragraph) as is comprised in the following words: "That, to wit, on the 17th day of February, 1887, as of the first day of January, 1887, the said testatrix paid, on account of her said indebtedness to the defendant, then Catherine Augusta Patten, as aforesaid, the sum of, to wit, *of* $102,800, by assigning and transferring to her, the said defendant, bonds of the United States of the par value of $80,000 and of the actual value of, to wit, $102,800, with benefit of the interest thereon since January 1st, 1887," and to so much of the bill as touches the same subject-matter, and for grounds of demurrer assigns—

That the said allegation touching and in connection with the averments of complainants' bill is irrelevant and immaterial, made up of surplusage, and impertinent in a legal sense, and she further submits to the court that until she advances a claim against the estate of her mother, which she has not done, and there is no aver-

ment that she has done, the question as to whether that claim has been paid in full or in part cannot arise, and particularly cannot arise under the other averments of this bill.

The defendant demurs to so much of the bill (paragraph 8th) as is comprised in the following words:

"The estate of the said testatrix now stands justly indebted to the defendant in the sum of $101,600 as of the — of September, 1885, subject to a credit of $102,800 as of the first day of January, 1887," and to so much of the bill as touches the same subject-matter—

And for grounds of demurrer assigns the same grounds alleged in paragraph 13 of this answer.

15. The defendant demurs to so much of the bill (paragraph 12th) as is comprised in the following words:

"And that if the payment to said defendant of said 17th day of February, 1887, as hereinbefore set forth, was not a payment to said defendant an account of a then existing indebtedness to her the same was and is in law an advancement to said defendant and is so to be treated in the execution of her said last will and testament and the administration of the estate of said testatrix," and to so much of the bill as seeks to raise the question of any alleged advancement, and for grounds of demurrer assigns, 1st, that touching the tenor and scope of the said bill the question of advancement and non-advancement cannot in this proceeding arise: 2nd, that it
16 is not competent for the complainants, having alleged under oath of their own knowledge, as they have in the petition to the orphans' court, referred to in paragraph 6th of the said bill and made a part of the said bill, that the said transfer to Augusta was a payment, to also allege in the same bill that the said transfer to Augusta was an advancement, the said averments being radically and totally inconsistent and repugnant; 3rd, that the said clause presents a subject-matter entirely within the jurisdiction of the orphans' court and not within the jurisdiction of this court in the absence of special circumstances which are not alleged in the bill, and that there is an adequate remedy at law for the complainants touching any alleged advancement to said Augusta.

16. The defendant avers that the statements made in her answer to the petition of the complainants for the allowance of their claims in the orphans' court, which answer is made a part of the bill of the complainants and of this answer, are true in law and in fact, and that the testatrix intended to satisfy and did satisfy the claims of the complainants as wards by the legacies in her will, as set out in the copy thereof, truly made and annexed to the complainants' bill.

17. The defendant further avers that the said testatrix, by her will last described and by the legacies therein given to the plaintiffs, intended, and such is the conclusion of law, that the complainants should elect whether to enforce their claims as wards against the property which stood in the name of the testatrix at the date of the said will or against the said testatrix personally and her estate, or to take the legacies given by and under the said will, and that

the complainants have elected prior to the presentation of these claims against the estate, with full knowledge, to take, under and by virtue of the said will, first, by accepting the office of the executrices and qualifying and acting as such, and, second, by inventorying the entire property and estate which stood in the name of the said testatrix as the property of the said Anastasia Patten and not of the said wards, and by accepting and taking possession of the said legacies and their undivided shares of the said real estate, and in many other ways, and are therefore estopped and precluded from advancing any claim against her estate.

18. And for further particulars of the said election and estoppel defendant avers that as each of the said complainants became of full age each of the complainants found that the property which she had inherited from her father, as aforesaid, had been invested by the said Anastasia Patten in divers United States bonds registered in the name of Anastasia Patten on the books of the Department of the Treasury of the United States, and in divers and sundry stocks registered in the name of the said Anastasia Patten on the books of divers and sundry corporations, and in negotiable securities made payable to the said Anastasia Patten in her own name, secured by mortgages and deeds of trust upon real estate executed and made to her individually of the value of $500,000, and in valuable real estate, improved and unimproved, the title to which stood in the name of said Anastasia Patten, of the value of two million dollars; that thereupon each of the said complainants had
17 an election to recognize the said investment and to claim the property in which the same was invested to the extent of the investment of the funds belonging to them therein, and that, as alleged in the answer of defendant to the petition of complainants in the orphans' court for the allowance of said claims and repeated here, as there averred, the complainants and each of them, upon becoming of age, from that time to the death of said Anastasia Patten, ratified, approved, and recognized the said investments and thereby elected to receive the said property in lieu of the said money demands; that afterwards, to wit, after the death of the said Anastasia Patten and upon the 3rd day of October, 1888, the said complainants in this action filed a petition in this court, holding a special term for orphans' court business, for the probate of the will of the said Anastasia Patten, now a part of the record of this court, to which reference is made, the same being hereto attached and marked Exhibit B to this answer, which was verified under oath by the complainant Mary and signed by the other complainants, in which they averred—

"That the said Anastasia Patten died seized and possessed of both real and personal estate situated in the said District of Columbia; that the value of the personal estate of said decedent is estimated at and believed by your petitioners to be $120,332, and upon information and belief your petitioners represent as follows: That the personal property aforesaid, estimated as above set forth at $120,332, consists of household furniture, horses and carriages of the estimated value of $10,000, jewelry of the estimated value of $7,000, cash in

bank, $8,946.35; that the said notes, bonds, and stocks, so estimated at $94,385.65, consist of the decedent's undivided share and interest in notes and bonds secured upon real estate of the face value of $405,242.99, and of the said decedent's undivided share and interest in the following stocks, namely, 66 shares of stock of the Washington Brick Machine Co., of the face value or denomination of $100 per share," etc., setting forth all the stocks subsequently inventoried as wholly the property of the decedent by the said complainants.

By the said petition the complainants claimed on account of the investment of their property as wards in the name of Anastasia Patten that the said Anastasia Patten only owned $120,332 in full of the immense estate which she conveyed by her will; that the remainder belonged to the said complainants.

That thereupon the complainants and each of them had an election upon their own showing either to vindicate their title to an undivided equitable interest in the said property which the said testatrix could not as against them pass by her said will and claim the same adversely to the said will, or to take the said property under the said will as legatees, abandoning the claim to ownership therein.

That the said complainants elected to ratify the conveyance of their property by the said will and not to claim the same as against the said will, and to take the same as legatees under the said will, both by qualifying as executrices and thereby undertaking to perform the terms of the testatrix's will and also by inventory-
18 ing the said property in which they claimed an undivided interest as the property of the said Anastasia Patten, and in many other ways as above stated.

And in further evidence that they had so elected the said petition for probate contained the following clause:

"5. It is directed and requested in the said will that the executrices therein be not required to give bond as such executrices. 6. That the said petitioners, together with their sister, Augusta Glover, are residuary legatees under the said will, and your petitioners desire to give ample security for the payment of all the debts that are due or may be- *or may become* payable from the proceeds of the said estate." And accordingly they prayed:

"That the said will may be admitted to probate; that your petitioner may be authorized to proceed to the execution of the said will under the direction and order of this court, and that the executrix be required to give no bonds except to secure the payments of the debts aforesaid." That this prayer referred to the statute of the District of Columbia authorizing residuary legatees to take the entire estate of the testatrix as their own upon giving bond to pay debts and legacies, whereby they would become personally and jointly responsible for the payment of the very claims which they now attempt to set up, and the same would be by operation of law extinguished.

19. The defendant further avers that as stated in the answer of this defendant to the petition for the probate of claims in the orphans' court, hereinbefore referred to, that even if the complain-

ants had not at Anastasia Patten's death assented to the said investments the property, real and personal, standing in the name of the said Anastasia Patten having been purchased with the funds of the said Anastasia Patten, combined with the funds belonging to the complainants as wards for the said Anastasia Patten, the latter was a trustee *in invitum* for the said wards for the amount of their money and property invested in the said estate standing in the name of the said Anastasia Patten, and that the said complainants having acquired the said estate by legacy and by descent, and the portion bequeathed and descended to each of the complainants much exceeding in value the amount of their said claims reckoned as money demands, the said claims are by operation of law extinguished by the acquisition of the personal property and the descent cast of the real property.

20. And the defendant further avers that if the said complainants had so assented the said Anastasia Patten was to be considered a trustee by agreement for the complainants for the said property standing in her name to the extent of the amount of their funds invested therein; that the legal title becoming united with the equitable title and by any means whatsoever, as in this case by descent cast and by bequest, the same are merged and extinguished, and with them the liability of the said Anastasia Patten to the said wards, in view of the fact that the property acquired exceeded the amount of the claim therein and thereon.

21. And the defendant further avers that the complainant
19 Mary E. Patten became 16 years of age on the 26th day of November, 1876, and the complainant Josephine Patten became 16 years of age on the 2nd day of July, 1878, and the complainant Edith became 16 years of age on the 12th day of June, 1880, and that the passing of the bond of the said Anastasia Patten as guardian of each of them, which was a separate bond as to each of them, was on, to wit, the 1st day of January, 1873, and that before the impetration of the original writ in this cause, and before the 10th day of May, 1889, and before the death of the said Anastasia Patten, more than 12 years had elapsed from the passing of the bond as guardian for each of these complainants and six years had elapsed from the coming of each of them to full age; wherefore these claims aforesaid are barred by the statute of limitations of the District of Columbia, and they ought not to have or maintain this action.

22. And, further answering, defendant avers that as to the alleged cause of action set up in the bill of complainants as of the — day of September, 1885, that prior to the impetration of the original writ in this cause, and prior to the filing of this answer, and prior to the 10th day of May, 1889, and prior to the death of the said Anastasia Patten, more than three years had elapsed ensuing the cause thereof; wherefore the complainants ought not to have or maintain this action.

23. And defendant further says that by the laws of State of Nevada at and since the passing of said bonds an action could not and cannot be maintained on the liability of the said Anastasia Patten as guardian except within six years after the cause of action accrued

thereon, to wit, as to each complainant when each attained full age, which, by the laws of Nevada, for a female was and since has been and now is eighteen years of age, and that the complainant Mary attained the age of eighteen years on the 26th day of November, 1878, and the complainant Josephine attained the age of eighteen years on the 2nd day of July, 1880, and that the complainant Edith attained the age of eighteen years on the 12th day of June, 1882, and that more than six years from each of these dates had elapsed before the impetration of the original writ in this cause and before the filing of this answer in this cause, and before the 10th day of May, 1889, and before the death of Anastasia Patten; wherefore the said last-named complainants are barred by the statute of limitations of the State of Nevada and ought not to have or maintain this action.

24. And, further answering, defendant says that, as appears by the said bill of complaint, the defendant is and was at the impetration of the original writ in this cause a married woman, and her husband, John M. Glover, was and is living and within the jurisdiction of the court, and she avers the said John M. Glover is a necessary party to this suit.

25. The defendant further avers that the said claims of the said complainants and each of them were upon the 10th day of May, 1889, presented to the defendant as executrix for the estate of Anastasia Patten, as appears by the petition filed in the orphans' court of that date, and by her rejected and disputed and all liability of the said estate thereon denied, and that the subpœna of this court has never summoned this defendant unto this court as the executrix of Anastasia Patten, in which by the filing of this answer she for the first time voluntarily appears as executrix, and that the complainants did not and have not within nine months of the date of rejection of said claims sued thereon as required by law and ought not to have or maintain this suit.

26. The defendant denies each and every material allegation of the bill not expressly admitted and asks to be hence dismissed with her costs.

W. D. DAVIDGE &
JOHN M. GLOVER,
Sol'rs for Def't.

(Endorsed:) 12234. Eq. In the supreme court, D. C. Patten *et al. v.* Glover. Answer and demurrer of Augusta P. Glover to the bill of complaint. W. D. Davidge, John M. Glover, solicitors. Filed Mar. 8, 1890. R. J. Meigs, clerk.

21 *Cross-bill of Augusta P. Glover and John M. Glover Against the Above-named Plaintiffs.*

Filed Mar. 8, 1890. R. J. Meigs, clerk.

In the Supreme Court of the District of Columbia.

MARY E. PATTEN, JOSEPHINE A. PATTEN, Edith Patten, and Helen Patten, Pl'tfs, *vs.* AUGUSTA P. GLOVER, Def't. } In Equity. No. 12234.

Now comes the defendant, Augusta P. Glover, and John M. Glover, her husband, and prefer to the court this their bill of complaint by way of cross-bill in the above-entitled action and aver:

1. That they have been at all times hereinafter named subsequent to the 21st day of February, 1887, husband and wife.

2. That they are citizens of the city of St. Louis, State of Missouri, and that the said Augusta P. Glover sues as executrix of the estate of Anastasia Patten, as will hereafter more fully appear.

3. That the defendants in this cross-bill are residents of the city of Washington, District of Columbia, and are sued in their own right.

4. That Augusta P. Glover and the plaintiffs, Mary, Josephine, Edith, and Helen, are the sole surviving children, sole heirs, and next of kin of Anastasia Patten, who departed this life, domiciled in the city of Washington, District of Columbia, upon the 11th day of September, 1888.

5. That heretofore, to wit, on the 14th day of January, 1889, the plaintiffs and the defendant, Augusta P. Glover, duly qualified as executrices of the estate of the said Anastasia Patten under her last will and testament, a copy of which is hereto annexed, marked cross-bill, Exhibit A, and have since continued to and now do represent the estate in that capacity.

22 6. That the personal estate of the said Anastasia Patten at her death exceeded $500,000.00 after the payment of debts, and her real estate was in value about $2,000,000.00.

7. That, as appears by the bill of complaint in the original cause, to which reference is made, the plaintiffs in the original bill in their suit against the defendant make pretense in this action that the estate of Anastasia Patten is indebted to them and each of them in the sum of $101,600, with interest, at the rate of 6 % per annum, from the — day of September, 1885, which cause the defendant, Augusta P. Glover, disputes and alleges that the said estate of Anastasia Patten is not indebted in any sum to the complainants and has set up in her answer filed in this cause many of the reasons why the plaintiffs should not have or maintain their action against the estate of Anastasia Patten and this defendant as her administratrix.

8. And reiterating and representing them in this cross-bill as the

grounds upon which the defendant bases her prayer for equitable and affirmative relief, in addition to a decree dismissing the bill, which she is advised that she may obtain by her answer, the defendant says are: Edmund Patten, the father of the plaintiffs in the original action and the defendant, Augusta P. Glover, died in Gold Hill, Nevada, in the year 1872, upon the 16th day of November, leaving a widow, Anastasia Patten, the mother of the plaintiffs and of the defendant, Augusta, *and* five daughters, comprising the defendant, Augusta, and the four plaintiffs in the original bill.

9. By the laws of Nevada and California, where all the property of Mrs. Patten was situated, she, the testatrix, inherited one-half and the children the remaining half, or one-tenth each, of his estate, he having died without making a will.

That Mrs. Patten became the sole administratrix of Edmund Patten and likewise sole guardian of each of the children upon, to wit, the 1st day of January, 1873, when her bond as guardian was filed and approved and passed in the proper probate office in the city of Carson, State of Nevada.

That thereby the said Anastasia Patten became invested with the title to and control over both moieties of the said estate, one in her own right and the other as guardian of her said children. The said estate was never divided; nor did the said testatrix ever settle her final account as guardian, as the defendant is informed and believes. The power over the whole estate which thus vested in her was exercised with the best motives and with rare skill and judgment; that at the date of the will, to wit, the 23rd day of December, 1879, it consisted almost entirely of $1,000,000.00 in United States registered stock standing in the name of Anastasia Patten on the books of the United States Treasury Department. The original investments were changed and new investments were made from time to time, in which there was no distinction made in respect to the said moieties, and under her management, acquiesced in by the said children and expressly agreed to by each of them as they became of age, the estate rapidly increased in value, and that in pursuance of this understanding and agreement that the funds of the different
23 wards should be invested and reinvested in the name of the said Anastasia Patten, no one ever called her to account as guardian, although nearly thirteen years had elapsed at her death since Mary E. Patten, the eldest child, had attained the age of sixteen years.

That from the date of the said will until the day of her death the entire estate of both wards and herself continued exactly as before, and both moieties were indiscriminately invested and reinvested for the benefit of the said children and the said Anastasia Patten and with success; that the value of the said estate between the date of the will and the date of her death had been more than trebled.

10. The defendant further states that defendant Mary E. Patten became 16 years of age on the 26th day of November, 1876, and the plaintiff Josephine A. Patten became 16 years of age on the 2nd day of July, 1878, and the plaintiff Edith became 16 years of age on the 12th day of June, 1880, and the plaintiff Helen became 16

years of age on the 11th day of September, 1884, and that accordingly at the date of the said will the plaintiffs Mary and Josephine and the defendant Augusta were under the laws of the District of Columbia entitled to demand and receive their estates as wards from the said Anastasia Patten and to sue upon her bond as guardian, and the complainant Edith was at the date of the will within about six months of the same age and capacity.

11. That thereupon said Anastasia Patten, by her last will and testament of that date, to wit, the 23rd of December, 1879, devised and bequeathed to the complainants and the defendant in equal parts her entire estate, real and personal, as well *as* her own moiety of the estate of Edmund Patten as that belonging to the plaintiffs in the original bill and the defendant Augusta, and intended and designed at the time that the said bequest should fully pay and satisfy any and every claim of the complainants in the original bill as wards of hers and as heirs of Edmund Patten, which devise and legacy appear in clause one of the will, set out as Exhibit A to this cross-bill.

12. That by clause four of the said will said testatrix provided as follows: "I direct that such United States bonds as I may have at the time of my decease shall be left intact and not be disposed of or hypothecated, but my said children shall have the interest which accrues thereon and divide the same share and share alike."

By this provision the said testatrix designed to and did tie up her entire estate as it then existed, it being composed entirely of such bonds upon trust for the benefit of the plaintiffs and defendant Augusta, which trust was incompatible with the rights of plaintiffs as wards or as creditors on account of the portion inherited from their father, and that by the said clause and by clause first of the said will the said testatrix intended that the entire property standing in her name, including the shares of the defendant and the plaintiffs as well as her own inherited from Edmund Patten, should be regarded as her own estate for the purpose of giving effect to the provisions of the will, and that the plaintiffs should elect whether to accept the said bequests and devises and take as legatees
24 under the said will, abandoning their claims as creditors or part owners of the said property or to claim the same by title adverse to the will, and that the complainants have elected prior to the presentation of the claim set out in the original bill against the estate with full knowledge to take, under and by virtue of the said will, first, by accepting the offices of executrices and qualifying and acting as such, and, second, by inventorying the entire property and estate which stood in the name of the said testatrix as the property of the said Anastasia Patten and not of the said wards, and by accepting and taking possession of the said legacies and their undivided shares of the said real estate and in many other ways, and are therefore estopped and precluded from advancing any claim against her estate by reason of their said inheritance in the estate of Edmund Patten.

13. To give further particulars of the said election and estoppel the defendants aver that as each of the said complainants in the

original bill became of full age each of the complainants found that the property which she had inherited from her father's estate had been invested by the said Anastasia Patten in divers United States bonds registered in the name of Anastasia Patten on the books of the Department of the Treasury of the United States, and in divers and sundry stocks registered in the name of the said Anastasia Patten on the books of divers and sundry corporations, and in negotiable securities made payable to the said Anastasia Patten in her own name, secured by mortgages and deeds of trust upon real estate, executed and made to her individually, of the value of $500,000.00, and in real estate, improved and unimproved, the title of which stood in the name of the said Anastasia Patten, of the value of $2,000,000.00; that thereupon the said complainants had an election to recognize the said investments and to claim the property in which the same was invested to the extent of the investment of the funds belonging to them therein, and that the complainants and each of them, upon becoming of age, from that time to the death of the said Anastasia Patten, ratified, acquiesced in, and recognized the said investments and elected to receive the said property in lieu of the said moneyed demands; that afterwards, to wit, after the death of the said Anastasia Patten, and upon the 3rd day of October, 1888, the said complainants in this original action filed a petition in this court, holding a special term for orphans' court business, for the probate of the will of the said Anastasia Patten, a copy of which is hereto attached, marked Exhibit B to this cross-bill, which was verified under oath by the complainant Mary and signed by the other complainants, in which they aver in substance as set out in the answer of this defendant, for the particulars of which averment the said Exhibit B is referred to, that the said Anastasia Patten did not own the property standing in her name at her death, but only a small part thereof, and that her interest was only $120,332.00 therein, and that they, the petitioners, were the owners of the remainder of the property, having an undivided interest therein, and the said Anastasia Patten only owned an undivided interest, which claim the said complainants made on account of the investments of their property as wards in the name of Anastasia Patten and their recognition and acquiescence in the same.

That thereupon the plaintiffs and each of them had an election either to vindicate their title to an undivided equitable interest in the said property, which the said testatrix could not as against them pass by her said will, and claim the same adversely to the said will or to take the said property under the said will as legatees, abandoning the claim to ownership therein.

That, as appears by the said bill of complaint, the complainants contended that at the death of the said Anastasia Patten the defendant Augusta has been paid or satisfied as to her portion of the common property, by means whereof, if true, as they aver, the effect of the will, giving the same in equal parts to the defendant Augusta and complainants, would be to give a portion of the property of the complainants to the defendant Augusta.

That thereupon, by their own showing in said original bill of complaint, if true, the said complainants elected to ratify the conveyance of their property by the said will and not to claim the same as against the said will and to take the same as legatees under the said will by qualifying as executrices and thereby undertaking to perform the provisions of the will according to its tenor, and also by inventorying the very property which they claim in the amended petition for probate as their own as the property of the said Anastasia Patten, and in many other ways, as above stated.

And in further evidence that they had so elected, the said petition for probate contained a clause praying that under the statute of the District of Columbia the complainants and defendants, who were residuary legatees under the will, might be permitted to give a small bond to pay debts and legacies, which bond they ask might be a small amount, and the operation of which prayer, if granted, would, under the statutes of the District of Columbia, require the defendant and the complainants to give a joint bond for the payment of all debts and legacies, the operation of which would be to take the entire property of the estate as legatees and extinguish the very claims which the complainants in the original bill are now attempting to set up.

14. The defendant Augusta further says, as stated in the answer, that by reason of the premises the said Anastasia Patten, being trustee, either by agreement or *in invitum* for the complainants, of the very property which they after acquired from her by descent and bequest, that their claims are, by operation of law, extinguished for the reasons—in the manner fully set out in the answer, to which reference is made.

15. And the defendant further says that, as will appear by her said answer last named, the claims of the complainants are also barred by the statute of limitation, whether of the *lex loci cantractus* or the *lex fori*, and also, as she maintains and avers, by the said statute of the District of Columbia, which require suit within nine months after the rejection of the claim by an executrix, for the particulars of which pleas she refers to the answer.

26 16. And the defendant Augusta further says that a decree dismissing the bill will not give her, the defendant, adequate relief against the complainants for the reasons stated, as follows:

Under the provisions of the said will the complainants and the defendant were appointed executrices and, as before stated, have all qualified as such; that the complainants never, prior to the death of Mrs. Patten or since, have had the slightest business experience of any kind, and there being no person of experience in business matters on their side connected with the administration of the estate, it is impossible to procure the payment of the debts of the estate, or for proper administration by agreement between the executrices as to the smallest details of business matters.

They being possessed of the idea that it is possible for them to take their property as legatees and also claim it as creditors, the complainants regard or profess to regard themselves as the owners

of the entire personal estate and the defendant as an interloper and intruder in all matters of administration.

That upon the same hypothesis they refuse to disclose to the defendant the most important details touching the administration of the estate and the existence of the assets, the knowledge and inspection of which is material to the discharge of her duties as executrix and which she has been compelled to seek through the agencies of bills to discover and other legal proceedings.

That in pursuance of her duty as executrix the defendant gave checks to the clerk of this court for his costs and divers and sundry small creditors of the estate for amounts unquestionably due them, which the plaintiffs in the original action refused to recognize for no apparent reason than that the defendant took the initiative in disposing of them.

That owing to the prepossession of the complainants with the theory above named, that they are creditors to whom is due the entire personalty of the estate, it has been impossible to invest the moneys of the estate pending the litigation in any way, as an agreement cannot be secured between the different parties.

There is now in the banking-house of Riggs & Co. $200,000.00 in cash, and has been for a long time, which is drawing no interest and about which no arrangement can be reached, but the use of which the bankers have, to the loss of the beneficiaries of the estate, and that unless some action is taken by the court as hereinafter prayed such is likely to remain the condition of the estate during the four or five years' litigation upon appeal which will in all probability ensue, no matter what may be the determination of the question by this honorable court as to the existence or non-existence of the claims set up by the plaintiffs.

That there are now no debts due by the estate beyond those, amounting to a few dollars, for which the defendant has already given her check, which the complainants have refused to countersign, unless the court should hold that the estate is indebted to the complainants on the subject-matter of their original bill, which defendant avers in fact and in law is not the case.

That the complainants, possessing or professing to be pos-
27 sessed of the idea that they can as creditors absorb the entire property of the estate, refuse to countersign the checks given by this defendant for the legacies left by the will to the legatees named therein, apparently upon the theory that after the payment of their debts there will be no money to pay the said legatees.

That the pretense of indebtedness to the plaintiffs is false in fact, unsustainable in law, and a forced and constrained construction put upon a state of facts existing in part and in part fictitious, the object of which is to secure in favor of the complainants in the original bill an unjust advantage in the distribution of the estate, as follows:

That if the $80,000.00 in bonds transferred to Augusta P. Glover on the 17th day of February, 1887, be considered as an advancement on account of her legacy under the will, and the alleged payment to the complainants, as recited in the bill, on the 15th day of

October, 1887, be also considered as an advancement (if there was any such payment to them) on account of their interest, then there would be remaining to the defendant Augusta a large portion of the personal estate after the payment of the legacies provided by Mrs. Patten's will; but if it be considered that the said transfer to her was a payment and that the plaintiffs are creditors as alleged in their bill, then there is now due, if their claims are correct, to them alone $113,000.00 or thereabouts, in interest alone, and by the conclusion of this litigation*tion* the entire personal estate will be absorbed by complainants' claims alone, cutting out the legacies completely.

The defendant therefore says that the ordinary methods of administering an estate are, in view of the unusual circumstances of this case, totally inadequate remedies for the settlement without a multiplicity of suits and a great deal of useless and unnecessary litigation of the questions at issue in connection therewith; that if this court should upon final hearing decide against plaintiffs upon their claims as creditors that an appeal, however frivolous or vexatiously taken, would enable them to continue to set up their alleged claims through the five years ensuing, until the same could finally be heard in the Supreme Court of the United States, and that meanwhile the loss to the defendant by means of the sequestration of her entire estate and the multiplied and vexatious and useless litigation growing out of the position of the complainants would entail a loss upon defendant for which there is no adequate remedy at law and damages for which there is no adequate measure of compensation; but defendant says that if complainants are enjoined from further setting up the claim that the estate of Anastasia Patten is indebted to them on account of their inheritance from their father, which, as before stated, they have already received as legatees, there will remain only the question of advancement, which can then be promptly tried and determined in the orphans' court.

That the complainant does not desire to forestall the hearing of the matters and things set up in the original bill, or to give this cross-bill precedence over the determination of the issues raised by the original bill of complaint and this defendant's answer
28 thereto; but she does desire, and so prays the court, that after a hearing upon the bill and answer, if it be first determined that the complainants have no claim as creditors, that an injunction may issue, commanding and restraining them and perpetually enjoining them from setting up the alleged claims against the estate of Anastasia Patten and from prosecuting any action therefor against the said estate in any form, and from in anywise or to any person pretending that the estate of Anastasia Patten is indebted to them.

The defendant prays that the plaintiffs may each of them be required to answer this bill, and that the subpœna of this court may issue for that purpose.

That the plaintiffs may be required to answer the bill without oath, an answer under oath being waived.

Or that the court may grant such other and further relief as it may deem fit.

The defendants of this cross-bill are Mary E. Patten, Josephine A. Patten, Edith Patten, and Helen Patten.

(Signed) JOHN M. GLOVER,
Solicitor for Pl'ffs in Cross-bill.

29 In the Supreme Court of the District of Columbia.

MARY E. PATTEN *et al.*, Complainant-, *against* AUGUSTA P. GLOVER, Defendant. } No. 12234, Equity Docket 30.

MARCH 8TH, 1890.

The President of the United States to Mary E. Patten, Josephine A. Patten, Edith Patten, Helen Patten, defendant-:

You are hereby commanded to appear in this court at its first special term occurring ten days after service of this subpœna, and answer the exigency of the cross-bill of Augusta P. Glover, under pain of attachment and such other process of contempt as the court shall award.

Witness E. F. Bingham, chief justice.

[Seal of the Supreme Court of the District of Columbia.]

R. J. MEIGS, *Clerk, &c.*,
By L. C. WILLIAMS,
Ass't Clerk.

MEMORANDUM.—That the defendant- herewith served *is* to enter appearance in this suit in the clerk's office on or before the day at which this writ is returnable; otherwise the bill may be taken for confessed.

(Endorsed:) No. 12234, equity docket 30. Spa. to ans.
30 cross-bill of Augusta P. Glover. Mary E. Patten *et al. vs.* Augusta P. Glover. Subpœna to answer issued March 8, 1890. Returned March 8, 1890. Service accepted for all this 8 day of March, A. D. 1890. Henry E. Davis, solicitor.

31 Filed Mar. 26, 1890. R. J. Meigs, clerk.

In the Supreme Court of the District of Columbia.

MARY E. PATTEN and Others, Complainants, *against* AUGUSTA PATTEN GLOVER, Defendant. } Equity. No. 12234.

This cause coming on for consideration by the court upon the motions of the complainants to strike out the defendant's demurrers and the cro'-bill of the said defendant and John M. Glover, her husband, and being by the court considered—

It is this 26th day of March, A. D. 1890, ordered that the said demurrers and cross-bill be, and the same hereby are, stricken out, with costs, without prejudice.

W. S. COX, *J.*

(Endorsed:) Eq. No. 12234. Patten and others against Glover. Order striking out demurrers and cross-bill, &c. Filed Mar. 26, 1890. R. J. Meigs, clerk.

32 Filed Mar. 26, 1890. R. J. Meigs, clerk.

PATTEN *et al.* *vs.* GLOVER. } Equity. No. 12234.

The defendant in the above-entitled cause, Augusts P. Glover, now moves the court to allow the demurrers to portions of the original bill contained in her answer, and this day ordered to be stricken out for the want of the certificate of counsel and affidavit required by equity rule No. 26, to be amended by adding thereto such certificate and affidavit.

W. D. DAVIDGE,
Sol'r for Def't.

(Endorsed:) No. 12234. Patten *et al. v.* Glover. Motion for leave to amend demurrer by adding certificate of counsel and affidavit. The clerk will please file this motion. W. D. Davidge, sol'r for def't. Filed Mar. 26, 1890. R. J. Meigs, clerk.

33 *The Demurrer of Augusta P. Glover to Parts of the Bill of Complaint in the Above-entitled Cause.*

Filed Mar. 28, 1890. R. J. Meigs, clerk.

In the Supreme Court of the District of Columbia.

PATTEN *et al.* *vs.* GLOVER. } In Equity. No. 12234.

1. The defendant demurs to so much of the bill (7th paragraph) as is comprised in the following words: "That, to wit, on the 17th day of February, 1887, as of the first day of January, 1887, the said testatrix paid, on account of her said indebtedness to the defendant, then Cath-rine Augusta Patten, as aforesaid, the sum, to wit, of $102,800.00, by assigning and transferring to her, the said defendant, bonds of the United States of the par value of $80,000 and of the actual value of, to wit, $102,800.00, with benefit of the interest thereon since January 1st, 1887," and to so much of the bill as touches the same subject-matter, and for grounds of demurrer assigns:

That the said allegation touching and in connection with the averments of complainants' bill is irrelevant and immaterial, made up of surplusage, and impertinent in a legal sense; and she further submits to the court that until she advances a claim against the estate of her mother, which she has not done, and there is no averment that she has done, the question as to whether that
34 claim has been paid in full or in part cannot arise, and particularly cannot arise under the other averments of this bill.

2. The defendant demurs to so much of the bill (paragraph 8) as is comprised in the following words: "The estate of the said testatrix now stands justly indebted to the defendant in the sum of $101,600.00 as of the — of September, 1885, subject to a credit of $102,800.00 as of the 1st day of January, 1887," and to so much of the bill as touches the same subject-matter—

And for grounds of demurrer assigns the same grounds alleged in paragraph 1 of this demurrer.

3. The defendant demurs to so much of the bill (paragraph 12th) as is comprised in the following words:

"And that if the payment to said defendant of said 17th day of February, 1887, as hereinbefore set forth, was not a payment to said defendant on account of a then existing indebtedness to her, the same was and is in law an advancement to said defendant and is so to be treated in the execution of her said last will and testament and the administration of the estate of the said testatrix," and to so much of the bill as seeks to raise the question of any alleged advancement, and for grounds of demurrer assigns, 1st, that, touching the tenor and scope of the said bill, the question of advancement and non-advancement cannot in this proceeding arise; 2d, that it is competent for the complainants, having alleged under oath, of their own knowledge, as they have in the petition to the orphans' court, referred to in paragraph 6 of the said bill and made a part of the said bill, that the said transfer to Augusta was a payment, to also allege in the same bill that the said transfer to Augusta was an advancement, the said averment being radically and totally inconsistent and repugnant; that the said clause presents a subject-matter entirely without the jurisdiction of this court in the absence of special circumstances, which are not alleged in the bill, and that there is an adequate remedy at law for the complainants touching any alleged advancement to said Augusta.

I, Walter D. Davidge, solicitor for the defendant, certify that in my opinion the foregoing demurrers are well founded in law.

(Signed) W. D. DAVIDGE,
Solicitor for Defendant.

SOUTHERN DISTRICT OF NEW YORK, } ss:
County of New York, }

Augusta P. Glover, being duly sworn, on her oath states that the foregoing demurrers are not interposed for delay.

(Signed) AUGUSTA P. GLOVER.

Subscribed and sworn to before me this 27th day of March, 1890.
(Signed) JOHN A. SHIELDS,
[SEAL.] *U. S. Commissioner, S. D. of N. Y.*

(Endorsed:) 12234, eq. doc. 30. Patten & *al. vs.* Glover. Demurrers. The clerk will please file. W. D. Davidge, sol'r
35 for dem't. Filed Mar. 28, 1890. R. J. Meigs, clerk.

Filed Mar. 28, 1890. R. J. Meigs, clerk.

PATTEN *et al.* *vs.* GLOVER. } No. 12234.

The clerk will please enter the motion to amend the demurrers in the above-entitled cause withdrawn.

W. D. DAVIDGE,
Sol'r for Def't.

(Endorsed:) No. 12234, eq. doc. 30. Glover *vs.* Patten. Withdrawal of motion to amend demurrers. The clerk will please file. W. D. Davidge, for def't. Filed Mar. 28, 1890. R. J. Meigs, clerk.

36 *Stipulation for Amendment of Bill.*

Filed March 31st, 1890. R. J. Meigs, clerk.

In the Supreme Court of the District of Columbia.

PATTEN *vs.* GLOVER. } No. 12234. In Equity.

It is agreed that the complainants may amend their bill by making John M. Glover a party defendant, and that he will plead, answer, or demur, as he may be advised, within one week from the service of process; that the answer and demurrers of Mrs. Glover now on file shall be held and taken as an answer and demurrers to the bill as amended, and no new answer and demurrers need be filed by her to the bill as amended, and the said demurrers of Mrs. Glover shall stand for argument on Wednesday, the 9th of April next, or as soon as they can be heard.

HENRY E. DAVIS,
Sol'r for Compl'ts.
W. D. DAVIDGE,
Sol'r of Mrs. Glover.

March 31st, 1890.

(Endorsed:) 12234. Equity. Patten *v.* Glover. Stipulation that complainant- may amend *his* bill. Filed Mar. 31, 1890. R. J. Meigs, clerk.

37 *Amendment of Bill by Making John M. Glover Party Defendant.*

Filed March 31, 1890. R. J. Meigs, clerk.

In the Supreme Court of the District of Columbia.

MARY E. PATTEN *et al.*, Complainants,
vs.
AUGUSTA P. GLOVER *et al.*, Defendants. } Equity. No. 12234.

Come now the complainants in the above-entitled cause and, in accordance with stipulation of counsel this day therein filed, amend their bill of complaint by making party thereto John M. Glover, the husband of the defendant, Augusta P. Glover, and, repeating the averments and allegations in the original bill contained, pray that process may duly issue out of this court directed to the said John M. Glover to appear to and answer the said bill as hereby amended.

HENRY E. DAVIS,
Solicitor for Complainants.

(Endorsed:) Eq. No. 12234. Patten *et al. v.* Glover. Amendment of bill. H. E. Davis, sol'r. Filed Mar. 31, 1890. R. J. Meigs, clerk.

38 *The Demurrer of John M. Glover to the Amended Bill of Complaint.*

Filed Apr. 5, 1890. R. J. Meigs, clerk.

In the Supreme Court of the District of Columbia.

PATTEN *et al.*
vs.
GLOVER. } In Equity. No. 12234, Equity Docket No. 30.

The defendant John M. Glover, by his attorney, demurs to the amended bill of complaint, and for grounds of demurrer assigns—

1. Because it appears by the said bill that the complainants are suing jointly on the causes of action, which are not joined, but several in their nature, and there is a misjoinder of parties plaintiff.

2. Because it appears by the said bill that the complainants, as creditors, are pressing claims against the estate of the testatrix, and as distributees are claiming that the defendant should be charged with an advancement, which distinct questions cannot be tried together, and there is a misjoinder of causes of action.

3. Because it appears by the said bill that the defendant is sued in the same action as executrix and as one individual and the bill is multifarious.

4. Because it appears by the said bill that the transfer of date February 17, 1887, to Augusta P. Glover was both a payment on

account of a precedent debt and an advancement by way of gift, which statements are repugnant and inconsistent and cannot be advanced together with same bill.

5. Because it appears by the said bill that the claim of the complainants and each of them were upon, to wit, the 10th day of May, 1889, presented, duly authenticated, to the defendant Augusta P. Glover, executrix of the estate of Anastasia Patten, and upon, to wit, the 27th day of May, 1889, by her "rejected" and "disputed," and that since the said date more than nine months elapsed before the impetration of the original writ in this cause (on, to wit, the 31st day of March, 1890) against this defendant. Wherefore the complainants and each of them ought not to have or maintain this suit.

Wherefore, upon the grounds aforesaid and each of them and others apparent upon the face of the record, the defendant prays judgment whether he ought to make further answer to the said bill of complainant.

(Signed) W. D. DAVIDGE,
Solicitor for Defendant.

I hereby certify that, in my opinion, the foregoing demurrer is well founded in law.

(Signed) W. D. DAVIDGE,
Solicitor for Defendant.

39 I, John M. Glover, do solemnly swear that the foregoing demurrer is not interposed for delay.

(Signed) JOHN M. GLOVER.

DISTRICT OF COLUMBIA, *City of Washington,* } *ss:*

Sworn and subscribed to before me this 1st day of April, 1890.

(Signed) FRANK B. MARLOW,
[SEAL.] *Notary Public.*

(Endorsed:) In equity. 12234. Patten *et al. v.* Glover. Demurrer of John M. Glover to amended bill. The clerk will please file. W. D. Davidge, sol'r for dem't. Filed April 5, 1890. R. J. Meigs, clerk.

40 *Order Sustaining in Part and Overruling in Part Demurrers.*

In the Supreme Court of the District of Columbia.

MARY E. PATTEN and Others
against
AUGUSTA P. GLOVER *et vir.* } Equity. 12234.

This cause coming on to be heard upon the bill of complaint and the demurrers of the defendants thereto, and having been by the court considered, it is, this 18th day of June, A. D. 1890, ordered

adjudged, and decreed that the demurrer of the defendant Augusta P. Glover as to the third paragraph thereof be sustained and as to the first and second paragraphs thereof be overruled, and that the demurrer of the defendant John M. Glover be sustained as to the second and third grounds therein stated and overruled as to the first, fourth, and fifth of said grounds; and it is further ordered that the complainants have leave to amend their bill of complaint in conformity herewith.

(Signed) W. S. COX, *J.*

(Endorsed:) Equity. No. 12234. Patten *et al. v.* Glover *et al.* Order sustaining demurrers in part. Filed June 18, 1890. R. J. Meigs, clerk.

41 Filed Jul- 15, 1890. R. J. Meigs, clerk.

In the Supreme Court of the District of Columbia.

MARY E. PATTEN *et al.*, Complainants,
vs.
AUGUSTA P. GLOVER and Husband, Defendants. } In Equity. No. 12234.

Come now the complainants, by leave of the court in that behalf first had and obtained, and amend their bill of complaint in the above-entitled cause as follows:

1. By striking out the second paragraph of the said bill and substituting in place thereof the following:

"Second. That the defendants, who are husband and wife, are residents of the State of Missouri, but are now commorant in the District of Columbia, and the defendant Augusta P. Glover is sued as an executrix of the estate of *of* Anastasia Patten, late of the District of Columbia, deceased, as hereinafter more fully appears, and the defendant John M. Glover is sued as the husband of said defendant, Augusta P. Glover."

2. By striking from the said bill of complaint the fourth paragraph thereof and substituting in place thereof the following:

42 "Fourth. That the complainants and the defendant Augusta P. Glover are the only children, heirs-at-law, and next of kin of said testatrix."

3. By inserting after the word "defendant," in the second line of the fifth paragraph of said bill, the words "Augusta P. Glover."

4. By inserting after the word "defendant," in the second line of the sixth paragraph of said bill, the words "Augusta P. Glover," and before the word "defendant," in each of the fifth, twelfth, and seventeenth lines, and the last line but two of the said sixth paragraph, the word "said."

5. By inserting after the word "defendant," in the third and fourth lines of the seventh paragraph of said bill, the words "Augusta P. Glover," and before the word "defendant," in the last line but one of the said paragraph, the word "said."

6. By inserting after the word "defendant," in the third line of the eighth paragraph of said bill, the words "Augusta P. Glover," and before the word "defendant," in the fourth line of said paragraph, the word "said."

7. By inserting after the word "defendant," in the eleventh line of the ninth paragraph of said bill, the words "Augusta P. Glover."

8. By inserting before the word "defendant," in each of the second, sixth, fourteenth, eighteenth, twenty-third, twenty-
43 fifth, twenty-eighth, thirty-second, and thirty-ninth lines of the tenth paragraph of said bill, the word "said."

9. By inserting after the word "defendant," in the eleventh line *line* of the eleventh paragraph of said bill, the words "Augusta P. Glover."

10. By inserting after the word "defendant," in the ninth line of the twelfth paragraph of said bill, the words "Augusta P. Glover," and by inserting before the word "defendant," in each of the fifteenth, twenty-fourth, twenty-eighth, thirty-first, thirty-second, thirty-ninth, and forty-first lines of the said twelfth paragraph, the word "said," and by striking from the said twelfth paragraph the whole of the last clause thereof, beginning with the words "and that if the payment to the said defendant," and ending with the words "the estate of said testatrix."

11. By striking from said bill the first prayer thereof and substituting in place thereof the following:

"One. That process may duly issue to the defendants requiring them and each of them to appear to and answer the exigency of this bill of complaint, but the complainants, conformably to equity rule No. 63 of this court, hereby expressly waive an answer by said defendants under oath, it being the purpose and intent of the complainants that the answer of neither of the said defendants shall be evidence in her or his favor."

44 12. By striking from the said bill the third prayer thereof and substituting in place thereof the following:

"Third. That the rights, claims, and demands of the complainants in the premises may be adjudged and determined by this court."

13. By striking out the last — sentence of the said bill and substituting in place thereof the following:

"The defendants to this bill of complaint are Augusta Patten Glover, executrix of the estate of Anastasia Patten, and John M Glover."

HENRY E. DAVIS,
Solicitor for Complainants.

45 *Amended Bill.*

Filed July 15, 1890.

In the Supreme Court of the District of Columbia.

MARY E. PATTEN, JOSEPHINE A. PATTEN, Edith A. Patten, Helen Patten, Complainants,
vs.
AUGUSTA P. GLOVER *et vir*, Defendants.
} In Equity. No. 12234.

The complainants state as follows:

First. That they are residents of the District of Columbia and bring this suit in their own right.

Second. That the defendants, who are husband and wife, are residents of the State of Missouri, but are now commorant in the District of Columbia, and the defendant Augusta P. Glover is sued as an executrix of the estate of Anastasia Patten, late of the District of Columbia, deceased, as hereinafter more fully appears,
46 and the defendant John M. Glover is sued as the husband of said defendant Augusta P. Glover.

Third. That on, to wit, the eleventh day of September, A. D. 1888, the said Anastasia Patten, late a resident of said District, departed this life, having previously made, published, and declared a paper-writing as and for her last will and testament, a true copy whereof, marked Exhibit A, is hereto annexed and prayed to be taken as part hereof; that, as appears on its face, said last will and testament was duly executed to pass personal estate, but was not so executed as to pass real estate in the District of Columbia, by reason whereof the said Anastasia Patten, as to such real estate, died intestate; that all the real estate owned and possessed by said Anastasia Patten at the time of her death is situate in the District of Columbia, except a part of one tract thereof, which said tract lies in part in said District of Columbia and in part in the State of Maryland, and that the said last will and testament of said Anastasia Patten was so executed as to pass so much of said real estate as lies in said State of Maryland.

Fourth. That the complainants and the defendant Augusta P. Glover are the only children, heirs-at-law, and next of kin of said testatrix.

Fifth. That in and by said last will and testament aforesaid the complainants and the defendant Augusta P. Glover are duly appointed and constituted as the executrices thereof; that they have duly qualified as such executrices and are now engaged as such in the administration of the estate of said testatrix, and that, as appears by the inventory of said estate, heretofore returned and now on file among the records of this court, the personal estate of said testatrix exceeds in amount the sum of five hundred thousand dollars.

Sixth. That in her lifetime the said testatrix was indebted to the complainants and the defendant Augusta P. Glover under the circumstances and in the manner following: As children of Edmund Patten, late the husband of said testatrix, the complainants and the said defendant inherited from their said father an estate, which estate was received, administered upon, and retained by said testatrix as their guardian, and on, to wit, the — day of September, A. D. 1885, the amount of indebtedness of said testatrix in the premises, on account of the estate aforesaid, was adjusted, settled, and determined by mutual agreement of the said testatrix on the one part and on the other the complainants and the said defendant (then Katherine Augusta Patten), except the complainant Helen Patten, who did not unite therein because, although she was at the time above the age of sixteen years, she yet was within the age of twenty-one years and was thought incompetent to do so; which said agreement was duly signed and executed by the complainants and the said defendant, except said complainant Helen, and is in the words and figures following, to wit:

"Whereas our mother, Anastasia Patten, as guardian for us, received in the years 1873, '4, '5 certain amounts of money, being our portion by inheritance of the estate of our deceased father; and

47 Whereas no special separate investments of the money so received have been made by our said guardian, but the same has been by her kept and safely invested in connection with moneys belonging to her in her own right derived from the said estate; and

Whereas our said guardian has, up to the present date, had entire charge of our maintenance and education and has, during the past thirteen years, incurred a large amount of family expenses for our benefit, of which expenses no account has been kept by her; and

Whereas we and our said guardian are now desirous of settling the account between us in a just and equitable manner, without attempting to secure technical accuracy in such settlement; and

Whereas our said mother and guardian has submitted to us for inspection all accounts and papers in her possession touching or relating to the receipts and disbursements entering into such accounting, and we have personally general knowledge concerning the family expenses during said period; and

Whereas from such examination and knowledge we believe that by a payment to each of us by our said guardian of the sum of $101,600 an equitable settlement will be made and full justice done to each of us:

Now, therefore, each of us for herself agrees to accept the said sum of $101,600 in full and complete settlement of all accounts, claims, and demands between us and each of us and our said mother and guardian and in full satisfaction of all claims and demands of whatever character arising out of or connected with the administration of said estate or the said relation of guardian and ward,

and each of us for herself authorizes and requests that upon presentation of this agreement and a receipt for the above amount the court, having jurisdiction thereof, will, without further investigation of accounts so far as they concern either of us, pass the final accounts of our mother as administratrix and guardian and by proper decree discharge those liable as bondsmen for her action in either capacity.

(Signed) MARY ELLEN PATTEN.
KATHERINE AUGUSTA PATTEN.
JOSEPHINE ANTOINETTE PATTEN.
EDITH PATTEN."

That the complainant Helen Patten, being fully advised in the premises, now adopts and accepts said adjustment, settlement, and determination aforesaid as though as she had duly participated in the same at the time of the making thereof, and that by virtue of the premises the said testatrix became and was indebted to each of the complainants and the said defendant as of the said — day of September, 1885, in the full sum of one hundred and one thousand six hundred dollars.

Seventh. That on, to wit, the seventeenth day of February, 1887, as of the first day of January, 1887, the said testatrix paid on account of her said indebtedness to the defendant Augusta P. Glover (then Katherine Augusta Patten) as aforesaid the sum of, to
48 wit, one hundred and two thousand eight hundred dollars by assigning and transferring to her, the said defendant, bonds of the United States of the par value of eighty thousand dollars and of the actual value of, to wit, one hundred and two thousand eight hundred dollars, with benefit of the interest thereon since January 1, 1887; that afterwards, to wit, on the fifteenth day of October, 1887, the said testatrix paid to each of the complainants on account of the several indebtednesses to them aforesaid the sum of eleven thousand two hundred and fifty dollars, and that besides the payments hereinbefore mentioned and specified no other or further sum has been paid or secured to be paid to the complainants or the said defendant on account of the several indebtednesses aforesaid.

Eighth. That by virtue of the premises the estate of the said testatrix now stands justly indebted to the complainants and the defendant Augusta P. Glover to the extent hereinbefore indicated—that is to say, to the said defendant in the sum of one hundred and one thousand six hundred dollars as of the — day of September, 1885, subject to a credit of one hundred and two thousand eight hundred dollars as of the first day of January, 1887, and to each of the complainants in the sum of one hundred and one thousand six hundred dollars as of said — day of September, 1885, subject to a credit of the fifteenth day of October, 1887, of eleven thousand two hundred and fifty dollars.

Ninth. That, as the complainants have been advised, they may not, as executrices as aforesaid, retain for their said claims against said testatrix hereinbefore set forth unless the same be first passed

by this court, sitting as an orphans' court, and to that end they heretofore, to wit, on the tenth day of May, 1889, presented to this court, sitting as such orphans' court, their petition duly setting forth the above-recited premises as to said indebtedness, and prayed the court to pass upon their said several claims and authorize the payment of the same, and that upon being duly summoned so to do the defendant Augusta P. Glover made answer to said petition, the said petition and answer being hereby referred to and made part hereof as fully, to all intents and purposes, as though the same were herein at large set forth.

Tenth. That in and by her said answer to said petition aforesaid the said defendant, admitting the inheritance by her and the complainants of the estate aforesaid from their said father, set forth and contended as follows:

That the said testatrix did become guardian of the complainants and said defendant, as alleged, and did receive their said estate aforesaid as such guardian, but that said testatrix never formally settled her accounts as such guardian, she not having been called upon so to do; that the paper set forth in the sixth paragraph of this bill was drawn and signed in order to enable said testatrix formally to close her accounts as guardian as aforesaid, but that the amounts agreed by the terms of said paper to be accepted by the complainants and said defendant were never paid, nor was any evidence of indebtedness given to them or any of them, and that notwithstanding said paper the accounts of said testatrix as guardian as
49 aforesaid remained open at the time of her death, and the said estate of the complainants and the said defendant was dealt with by said testatrix, after the execution of said paper, in the same manner as before the same was so as aforesaid drawn and signed, and that therefore, by reason of the circumstances, a trust existed on the part of the said testatrix towards the complainants and the said defendant in respect of their said estate, and that the relation of said testatrix to the complainants and the said defendant was recognized and treated by her to the day of her death as that of trustee and *cestuis que trustent* and not of debtor and creditors; and in and by her said answer aforesaid the said defendant further set forth and contended that by her said last will and testament the said testatrix devised, subject to certain bequests of comparatively trifling amount, all her estate, real and personal, as well as the estate of the said defendant and the complainants so as aforesaid alleged to have been held in trust for them as her own estate, and that such devise operated the extinguishment, discharge, and payment of any claim upon the part of the complainants in the premises, and that their said claims aforesaid ceased to be provable as debts against the estate of said testatrix, and that such alleged extinguishment, discharge, and payment are not affected by the fact that the said defendant and the complainants took title to the real estate of said testatrix by descent instead of by devise, in consequence of the insufficient execution of said last will and testament as aforesaid, and that the several indebtednesses alleged by these complainants were never recognized

or acted upon by said testatrix, and no part payments were made by her on account thereof.

Eleventh. That upon consideration of the petition and answer aforesaid, on, to wit, the thirteenth day of June, 1889, the justice holding the special term of this court for orphans' court business adjudged and ordered that the said petition presented a subject-matter within the jurisdiction of said court so holding said term, but that the claims of the complainants could not be determined by said court so sitting without the determination of matters whereof said court in such session had not jurisdiction, such as the effect upon said claims of the said last will and testament of said testatrix, the payment to the defendant Augusta P. Glover on account, as alleged and denied, and other matters, it may be. Wherefore further action upon said petition was by said justice suspended until said matters, whereof said court so sitting as aforesaid had not jurisdiction, should be first tried and determined in the appropriate tribunal in such manner as counsel might advise.

Twelfth. That the complainants being desirous that said matters as aforesaid may be tried and determined as in and by said order required, and being advised that said matters cannot otherwise be tried and determined than by this court sitting in equity, they therefore file this their bill of complaint to that end, and in that behalf they state further that at the time of making and signing the said paper, on the — day of September, 1885, in the sixth paragraph hereinbefore set forth, all of the complainants and the defendant Augusta P. Glover, except the complainant Helen, were
50 of full age, to wit, of the age of twenty-one years, and the said Helen was of full age so as to be entitled to receive her estate from said testatrix as her guardian, to wit, above the age of sixteen years; that by virtue of such the several ages of the complainants and the said defendant they were and each of them was capable and entitled in law to have and receive from their said guardian their said estate as aforesaid, and it then was and for a long time theretofore had been the duty in law of said testatrix, guardian as aforesaid, to deliver to them and each of them their said estate as aforesaid, the same consisting in contemplation of law exclusively of money; that thereby the said testatrix, as guardian as aforesaid, was and had theretofore become in law the debtor of the complainants and the said defendant and each of them without regard to said paper so drawn and signed as aforesaid, and the said paper was only in law an adjustment, accounting, and settlement between the said testatrix, guardian as aforesaid, on the one part, and the complainants and the said defendant, on the other, having for its object and purpose the ascertainment of the amount of indebtedness of the said testatrix to the complainants and the said defendant and each of them; that the residuary devise and bequest to the complainants and said defendant of said last will and testament of said testatrix, being in general terms and not of any specific property, estate, or amount and having been made before said indebtednesses were ascertained, does not in law constitute such a devise and bequest as does or can operate a payment or discharge of said several indebted-

nesses as aforesaid, and it was not the intention of said testatrix that the same should so operate; that even if the relation between said testatrix, guardian as aforesaid, on the one part, and the complainants and the said defendant, on the other, were not the relation of debtor and creditors, yet, nevertheless, the complainants and the said defendant, being sole heirs-at-law, next of kin, and residuary devisees and legatees as aforesaid, now stand in the place of said testatrix in respect of any liability to themselves on account of any trust relation in which said testatrix may have stood to them, and so there can arise and be determined in the premises no question of trust or liability or obligation growing out of any supposed relation of trust.

Wherefore, the premises considered, the complainants prays as follows:

1. That process may duly issue to the defendants, requiring them and each of them to appear to and answer the exigency of this bill of complaint; but the complainants, conformably to equity rule No. 63 of this court, hereby expressly waive an answer by said defendants under oath, it being the purpose and intent of the complainants that the answer of neither of the said defendants shall be evidence in her or his favor.

2. That the said last will and testament of said testatrix aforesaid may be construed by this court in view of its terms and provisions and the hereinbefore-recited facts and premises.

3. That the rights, claims, and demands of the complainants in the premises may be adjudged and determined by this court.

51 4. And that the complainants may have such other and further relief in the premises as the nature of their case may require.

The defendants to this bill of complaint are Augusta Patten Glover, executrix of the estate of Anastasia Patten, and John M. Glover.

HENRY E. DAVIS,
Solicitor for Complainants.

EXHIBIT A.

Last Will and Testament of Anastasia Patten.

I, Anastasia Patten widow, of the city and county of San Francisco being of sound and disposing mind, in view of the uncertainty of life do hereby revoke and cancel all former wills by me made and do hereby make, publish and declare this my last will and testament in manner following, that is to say:

First. I give, devise and bequeath to my children Mary E. Patten aged nineteen years, Augustus Patten aged eighteen years, Josephene A. Patten aged seventeen years, Edith Patten aged fifteen years and Nellie Patten aged eleven years, subject to the bequests hereinafter mentioned all the property, real, personal and mixed of which I may be possessed or to which I may be entitled at the time of my death; to be divided between them share and share alike.

Second. In the event that any of my said children should die before this will goes into effect, leaving no issue then the share of such child shall be divided among my surviving children share and share alike.

Third. I direct that in the event of the marriage of any of my said children before this will goes into effect the distributive share of such child shall be absolutely free from all control of her husband.

Fourth. I direct that such United States bonds which I may have at the time of my decease shall be left intact and not be disposed of or hypothecated, but my said children shall have the interest which accrues thereon and divide the same share and share alike.

Fifth. I direct that my children who may be executors of this will shall in their business affairs connected with my estate advise with and be guided by the advice of my friend Simon W. Glazier, Esq., of the city and county of San Francisco.

Sixth. I bequeath to my brother, J. P. Flannery, of the town of Gold Hill, State of Nevada, the sum of twenty thousand dollars, also to my sister Mrs. Ellen Hamlin of the city and county of San Francisco the like sum of twenty thousand dollars, also to St. Mary's hospital of the city and county of San Francisco the sum of five thousand dollars to be used for the relief of the poor in said city and county.

Seventh. I nominate and appoint such of my children as may have attained the age of majority at the time of my death and who are not otherwise incapacitated from undertaking the trust
52 as executors of this will and direct that no bond or undertaking shall be required to be given by them as such executors at any time during or for any purpose connected with the administration of my estate.

Eighth. I direct that those of my children who shall have attained the age of majority at the time of my death shall be the guardians of the persons and estate of those who remain minors at said time.

Witness my hand the 23d day of December, A. D. 1879.

(Signed) ANASTASIA PATTEN.

The foregoing instrument purporting to be the last will of Anastasia Patten widow, was on this twenty-third day of December, 1879, in presence of each of us subscribed by her and declared by her to be her last will and testament and we then and there in her presence and in the presence of each other and at her request have subscribed our names thereto as witnesses.

(Signed) PAUL NUMANN,
432 *Montg. Street, San Francisco.*

(Signed) S. W. GLAZIER,
412 *Cal. Street.*

Eq. No. 12234. Mary E. Patten *et al. vs.* Augusta P. Glover *et vir.* Amended bill. Henry E. Davis, sol'r for compl'ts. Filed July 15, 1890. R. J. Meigs, clerk.

53 *Answer of Augusta P. Glover to Part and Demurrer to Part of the Amended Bill.*

Filed July 30, '90.

In the Supreme Court of the District of Columbia.

MARY E. PATTEN, JOSEPHINE A. PATTEN, Edith Patten, and Helen Patten, Plaintiffs,
vs.
AUGUSTA P. GLOVER, Defendant.
} In Equity. No. 12234.

Now comes the said defendant, Augusta P. Glover, and, saving and reserving to herself all the benefits of all exceptions to the amended bill of complaint exhibited in this case on account of the many insufficiencies and imperfections thereof, and without waiving the same or any thereof and asking that she may have the benefit thereof the same as if taken by demurrer, for her answer to the said bill says:

1, 2, 3, 4, 5. The defendant admits the averments of the first, second, third, fourth, and fifth paragraphs of the bill.

6. The defendant admits that as children of Edmund Patten, late the husband of the said Anastasia Patten, the complainants and defendant inherited from their said father an estate; that the said Anastasia Patten was appointed guardian of the complainants and as such received such estate. She further admits that she and the complainants (except Helen) signed the paper set out in full in said paragraph six, and that at the date thereof Helen was above the age of 16 years and under the age of 21 years.

The defendant denies the remaining allegations of the paragraph.

54 7. The defendant denies the averments of the seventh paragraph of the bill, except as to that portion which is covered by the demurrer incorporated in the 14th paragraph of this answer.

8. The defendant denies the averments of the 8th paragraph of the bill, except as to that portion which is covered by the demurrer incorporated in the 14th paragraph of this answer.

9, 10, 11, 12. The defendant denies the averments of the 9th, 10th, 11th, and 12th paragraphs of the bill.

13. The defendant demurs to so much of the bill (7th paragraph) as is comprised in the following words: "That, to wit, on the 17th day of February, 1887, as of the first day of January, 1887, the said testatrix paid on account of her said indebtedness to the defendant, then Catherine Augusta Patten, as aforesaid, the sum of, to wit, $102,800.00, by assigning and transferring to her, the said defendant, bonds of the United States of the par value of $80,000.00 and the actual value, of, to wit, $102,800.00, with benefit of the interest thereon since January 1st, 1887," and to so much of the bill as

touches the same subject-matter, and for grounds of demurrer assigns—

That the said allegations touching and in connection with the averments of complainants' bill is irrelevant and immaterial, made up of surplusage, and impertinent in a legal sense; and she further submits to the court that until she advances a claim against the estate of her mother, which she has not done, the question as to whether that claim has been paid in full or in part cannot arise, and particularly cannot arise under the other averment of this bill.

14. The defendant demurs to so much of the bill (eighth paragraph) as is comprised in the following words:

"The estate of the said testatrix now stands justly indebted to the defendant, Augusta P. Glover, in the sum of $101,600.00 as of the — September, 1885, subject to a credit of $102,800.00 as of the first day of January, 1887," and to so much of the bill as touches the same subject-matter—

And for grounds of demurrer assigns the same grounds alleged in paragraph 13 of this answer.

15. Defendant avers that the father of the defendant and the complainants, Edmund Patten, was a citizen of the State of Nevada, and died in Gold Hill, in said State, in the year 1872, leaving a large estate and some real estate, but the greater bulk personal property. By the laws of Nevada, in which State he was domiciled, and of Nevada and California, in which States property was situated, the title to said estate vested at his death in his widow, the mother of the complainants and defendant, the said Anastasia Patten, as to one undivided moiety, and in his children, this defendant and the complainants, in equal parts as to the other undivided moiety, the said Edmund Patten having died intestate. Letters of administration were issued to the said Anastasia Patten upon the estate of her said husband, and she also received letters of guardianship of her said children, all of whom were infants at the decease of their father, and thereby practically became invested with title to and control over both moieties of the said estate, one in her own right and the other as trustee for her said children. The said estate was never divided, nor did the said testatrix ever settle her final account as administratrix or any account, whether annual or
55 final, as guardian, as she is informed and believes. The power over the whole estate, which was thus vested in her, was exercised with the best motives and with rare skill and judgment. At the date of the will it consisted almost entirely of about one million dollars in United States bonds, registered in the name of Anastasia Patten. The original investments were changed and new investments were made from time to time, in which there was no distinction made in respect to the said moieties, and under her management, acquiesced in by the said complainants and expressly agreed to by each of them as they came of age, the estate rapidly increased in value, and that in pursuance of this understanding and agreement that the funds of the different plaintiffs should be invested and reinvested in the name of the said Anastasia Patten, no one of them ever called her to account as guardian, although nearly

ten years had elapsed since the majority of Mary E. Patten, the eldest child. In September, 1885, it became apparent to the testatrix, either by the suggestion of her bondsman in the State of California upon her bond as guardian of her said wards or otherwise, that steps should be taken to enable her to formally close her accounts as administratrix and guardian, and that, for the purpose of enabling her to do so, the paper set out in paragraph — was drawn and, without any knowledge or means of knowing of the correctness of its statements and provisions, was signed by this defendant and such of the other children as had then attained the age of 21 years. No papers, vouchers, or accounts were submitted, and no investigation or examination of any form or kind was made by any of the wards, and no account was stated. The said paper when drawn and signed was never delivered to the children or any of them. There was no consideration of any sort moving to the said children or any of them for the execution of the said paper, nor was the said paper signed by their mother, nor was any evidence of indebtedness given by her to the said children or any of them, nor was any money or any part of the said estate representing the sums agreed by the said paper to be accepted separated from the residue of the said estate, nor was any evidence of the relinquishment of the interest in the said estate of the said plaintiffs or any of them given or requested, nor were the receipts mentioned in the said paper for presentation to the said court having jurisdiction or any of them given or requested by their mother, nor was anything done in execution of the pretended purposes of the said paper (as pretended in said bill) to work the relinquishment and sale by the said children, the plaintiffs, of their interest in the moiety of the said estate held in trust for them, but that after the execution of the said paper the said interest continued exactly as before and, together with the other moiety, was indiscriminately invested and reinvested for the benefit of the said complainants and their mother as if the said paper had never been executed, and with such success that the value of the said estate between the execution of the said paper and her death was more than doubled. This defendant therefore denies that the trust existing before the execution of the said paper as to a moiety of the said estate was extinguished by the said paper or intended so to be, or that the interest of the said
56 plaintiffs in the moiety of the said estate held in trust was converted or intended to be converted into a money demand provable in this court, and she avers that if the said paper be construed as defining in money the value of the interest of the said children in the said estate, the said interest continued to be held in trust, and that if the paper could be regarded as an agreement by plaintiffs as distributees and wards to give to the testatrix the option to liquidate or purchase their interests in the common property at a specified sum for the protection of her bond in California, as before described, that the said option was never exercised or agreed to be exercised by the said executrix, and that, in any view which can be taken of the said papers, the will of the said Anastasia Patten, proved and recorded in this court, and of which this re-

spondent and the petitioners are the executrices, whereby the testatrix devised, subject to certain bequests of comparatively trifling amount, all the estate, real and personal, as well the interest of the petitioners therein held in trust for them as her own interest in the said estate, was intended to and did operate the extinguishment and discharge of any claim on the part of the said devisees, the complainants, and that said claims ceased to be provable as debts against the said estate, and that the said extinguishment and discharge is not affected by the fact that the complainants obtained all the trust property, both their own interest and their mother's, — took title to the real-estate part of said property by descent instead of by devise in consequence of the attestation of the said will by only two witnesses.

This defendant further says that, whatever the legal effect of the said paper, the claims set up by the complainants and each of them in their petition against the estate of their mother were, if they ever existed by the will, proved and recorded in this court and referred to as part hereof, whereby she devised and bequeathed, subject to certain bequests, all her estate to the said children, share and share alike, — were intended to be and were extinguished and paid.

16. The defendant further avers that the testatrix by her will last described and by the legacies therein given to the plaintiffs intended (and such is the conclusion of law) that the complainants should elect whether to enforce their claims as wards against the property which stood in the name of the testatrix at the date of the said will or against the said testatrix personally and her estate or to take the legacies given by *and* the said will, and that the complainants have elected prior to the presentation of these claims against the estate with full knowledge to take, under and by virtue of the said will, first by accepting the office of executrices and qualifying and acting as such, and, second, by inventorying the entire property and estate which stood in the name of the said testatrix as the property of the said Anastasia Patten and not of the said wards and by accepting and taking possession of the said legacies and their undivided shares of the said real estate and in many other ways, and are therefore estopped and precluded from advancing any claim against her estate.

57 estoppel

17. And for further particulars of the said election and estoppel defendant avers that, as each of the said complainants became of full age, each of the complainants found that the property which she had inherited from her father as aforesaid had been invested by the said Anastasia Patten in divers United States bonds registered in the name of Anastasia Patten on the books of the Department of the Treasury of the United States and in divers and sundry stocks registered in the name of the said Anastasia Patten on the books of divers and sundry corporations and in negotiable securities made payable to the said Anastasia Patten in her own name, secured by mortgages and deeds of trust upon real estate executed and made to her individually of the value of $500,000.00, and in valuable real estate, improved and unimproved, the title to which stood in the name of said Anastasia Patten, of the value of, to

wit, two million dollars; that thereupon each of the said complainants had an election to recognize the said investment and to claim the property in which the same was invested to the extent of the investment of the funds belonging to her therein or to repudiate the same and demand payment in money, and that said complainants and each of them, upon becoming of age, then and from that time to the death of Anastasia Patten authorized, acquies-ed in, ratified, approved, and recognized the said investments and elected to receive the said property in lieu of the said money demands; that afterwards, to wit, after death of the said Anastasia Patten and upon the 3rd day of October, 1888, the said complainants in this action filed a petition in this court, holding a special term for orphans' court business, for the probate of the will of the said Anastasia Patten, now a part of the record of this court, to which reference is made, the same being hereto attached and marked Exhibit B to this answer, which was verified under oath by the complainant Mary and signed by the other complainants, in which they averred:

"That the said Anastasia Patten died seized and possessed of both real and personal estate situated in the said District of Columbia; that the value of the personal estate of said decedent is estimated at and believed by your petitioners to be $120,332.00, and, upon information and belief, your petitioners represent as follows: That the personal property aforesaid, estimated, as above set forth, at $120,332.00, consists of household furniture, horses, and carriages of the estimated value of $10,000.00; jewelry of the estimated value of $7,000.00; cash in bank, $8,946.35; that the said notes, bonds, and stock so estimated at $94,385.55 consist of the decedent's undivided share and interest in notes and bonds secured upon real estate of the face value of $405,242.99 and of the said decedent's undivided share and interest in the following stocks, namely, 66 shares of stock of the Washington Brick Machine Co., of the face value or denomination of $100.00 per share," etc., setting forth all the stock subsequently inventoried as wholly the property of the decedent by the said complainants.

By the said petition the complainants claimed on account of the investment of their property as wards in the name of Anas-
58 tasia Patten that the said Anastasia Patten only owned $120,332.00 in full of the immense estate which she conveyed by her will; that the remainder belonged to the said complainants.

That thereupon the complainants and each of them had an election upon their own showing either to vindicate her title to an undivided equitable interest in the said property, which the said testatrix could not as against them pass by her said will and claim the same adversely to the said will, or to take the said property under the said will as legatees, abandoning the claim to ownership therein.

That the said complainants on their own showing elected to ratify the conveyance of their property by the said will and not to claim the same as against the said will and to take the same as legatees under the said will, both by qualifying as executors and thereby undertaking to perform the terms of testatrix' will, and

also by inventorying the said property, in which they claimed an undivided interest as the property of the said Anastasia Patten, and in many other ways, as above stated.

And in further evidence that they had so elected the said petition for probate contained the following clause:

"5. It is directed and requested in the said will that the executrices therein be not required to give bond as such executrices.

6. That the said petitioners, together with their sister, Augusta Glover, are residuary legatees under the said will, and your petitioners desire to give ample security for the payment of all the debts that are due or may be or may become payable from the proceeds of the said estate," and accordingly they prayed—

"That they may be permitted to proceed with the execution of the said will under the direction and order of this court, and that the executrix be required to give no bonds except to secure the payment of the debts aforesaid."

That this prayer referred to the statute of the District of Columbia authorizing residuary legatees to take the entire estate of the testatrix as their own upon giving bond to pay debts and legacies whereby they would become personally and jointly responsible for the payment of the very claims which they now attempt to set up, and the same would be by operation of law extinguished.

18. The defendant further avers that even if the complainants had not at Anastasia Patten's death assented to the said investments the property, real and personal, standing in the name of the said Anastasia Patten, having been purchased with the funds of the said Anastasia Patten, combined with the funds belonging to the complainants as wards for the said Anastasia Patten, the latter was a trustee *in invitum* for the said wards for the amount of their money and property invested in the said estate standing in the name of the said Anastasia Patten, and that the said complainants have acquired the said estate by legacy and by descent, and, the shares bequeathed and descended to each of the complainants much exceeding in the value the amount of their said claims, reckoned as money demands, the said claims are, by operation of law, extinguished by the acquisition of the personal property and the descent cast of the real property.

59 19. And the defendant further avers that if the said complainants had so assented the said Anastasia Patten was to be considered a trustee by agreement for the complainants for the said property standing in her name to the extent of their funds invested therein; that, the legal title becoming united with the equitable title by any means whatsoever as in this case by descent cast and by bequest, the same are merged and extinguished, and with them the liability of the said Anastasia Patten to the said wards, in view of the fact that the property acquired exceeds the amount of the claim therein and thereon.

20. The defendant says that if the complainants' alleged debts are not held satisfied by the bequests in the will the legacies to her and the other legatees will be defeated.

And the defendant further avers that the complainant Mary E.

Patten became 16 years of age on the 26th day of November, 1876, and the complainant Josephine Patten became 16 years of age on the 2nd day of July, 1878, and the complainant Edith became 16 years of age on the 12th day of June, 1880, and that the passing of the bond of the said Anastasia Patten as guardian of each of them (which was a separate bond as to each of them), was on, to wit, the 19th day of August, 1873, and that before the impetration of the original writ in this cause and before the 10th day of May, 1889, and before the death of the said Anastasia Patten more than 12 years had elapsed since the passing of the bond as guardian for each of these said complainants and six years had elapsed from the coming of each of them to full age; wherefore these claims aforesaid are barred by the statute of limitations of the District of Columbia and they ought not to have or maintain this action.

22. And, further answering, defendant avers that as to the alleged cause of action set up in the bill of complaint as of the — day of September, 1885, that prior to the impetration of the original writ in this cause and prior to the filing of the original answer of this defendant in the case and prior to the 10th day of May, 1889, and prior to the death of the said Anastasia Patten more than three years had elapsed ensuing the cause thereof; wherefore the complainants ought not to have or maintain this action.

23. And defendant further says that by the laws of the State of Nevada, where the said bonds were given, at and since the passing of said bonds an action could not and cannot be maintained on the liability of the said Anastasia Patten, as guardian, except within six years after the cause of action accrued thereon, to wit, as to each complainant when each attained full age, which, by the laws of Nevada, for a female was and since has been and now is eighteen years of age, and that the complainant Mary attained the age of eighteen years on the 26th day of November, 1878, and the complainant Josephine attained the age of eighteen on the 2nd day of July, 1880, and that the complainant Edith attained the age of eighteen years on the 12th day of June, 1882, and that more than six years from each of these dates had elapsed before the impetration of the original writ in this cause and before the filing of the original answer in this cause and before the 10th day of May, 1889, and before
60 the death of Anastasia Patten; wherefore the said last-named complainants are barred by the statute of limitations of the State of Nevada and ought not to have or maintain this action.

24. The defendant further avers that the said claims of the said complainants and each of them were upon the 10th day of May, 1889, presented, duly authenticated, to the defendant as executrix for the estate of Anastasia Patten, as appears by the petition filed in the orphans' court of that date, and by her rejected and disputed and all liability of the said estate thereon denied, and that the subpœna of this court has never summoned this defendant into this court as the executrix of Anastasia Patten, in which by the filing of the original answer she, for the first time, voluntarily appeared as executrix, and that the complainants did not and have not within nine months of the date of rejection of said claims sued

thereon as required by law and ought not to have or maintain this suit.

25. The defendant avers that the complainant Helen was 16 years of age Sept. 11, 1884, and 21 years of age Sept. 11, 1889.

26. The defendant denies each and every material allegation of the bill not hereinbefore traversed, admitted, or demurred to, and asks to be hence dismissed with her costs.

JOHN M. GLOVER,
Solicitor for Augusta P. Glover.

I certify that, in my opinion, the foregoing demurrers are well founded in law.

JOHN M. GLOVER, *Solicitor.*

I, Augusta Patten Glover, do solemnly swear that the foregoing demurrers are not interposed for delay.

AUGUSTA P. GLOVER.

Subscribed and sworn to before me this 24th day of July, 1890.

B. S. JACOBY,
Notary Public.

61 STATE OF PENNSYLVANIA, *County of Monroe,* } *ss:*

I, Alonzo B. Shafer, prothonotary of the court of common pleas of Monroe county aforesaid, do hereby certify that B. S. Jacoby, Esquire, before whom the foregoing affidavits or acknowledgements were taken, was at the time of so doing and now is a notary public in and for said county, duly commissioned and qualified by the laws of this State to take the same, and that the same is in due form and in accordance with the laws thereof, and that I am acquainted with the handwriting of said officer, and that the signatures purporting to be his are genuine.

In testimony whereof I have hereunto set my hand and [SEAL.] affixed the seal of the said court, at Stroudsburg, the twenty-fourth day of July, A. D. 1890.

A. B. SHAFER,
Prothonotary,
Per S. S. SHAFER, *Deputy.*

(Endorsed:) Equity. No. 12234. Patten *et al. vs.* Glover *et al.* Answer and demurrer of Augusta P. Glover to amended bill. Clerk will please file. John M. Glover, solicitor. Filed July 30, 1890. R. J. Meigs, clerk.

62 *Motion to Strike Out Demurrers of Defendant Augusta P. Glover.*

Filed Aug. 2, 1890.

In the Supreme Court of the District of Columbia.

MARY E. PATTEN *et al.*, Complainants,
vs.
AUGUSTA P. GLOVER and HUSBAND, Defendants. } Equity. No. 12234.

Come now the complainants, by their solicitor, and move the court to strike out the demurrers of the defendant Augusta P. Glover to parts of the amended bill of complaint, to wit, the certain demurrers contained in the paper-writing denominated the answer of Augusta P. Glover to part and demurrer to part of the amended bill, and, further, to require the said Augusta P. Glover to answer the parts of the said amended bill so demurred to. And for grounds of this motion the complainants show that the said demurrers are in substance and effect the same as those interposed to the original bill by the said Augusta P. Glover and heretofore overruled.

HENRY E. DAVIS,
Solicitor for the Complainants.

(Endorsed:) Equity. No. 12234. Mary E. Patten *et al.*, comp's, *vs.* Augusta P. Glover & Husband, def'ts. Motion to strike out demurrers. Filed Aug. 2, 1890. R. J. Meigs, clerk.

63 *Answer of John M. Glover to Part and Demurrer to Part of the Amended Bill.*

Filed Aug. 12, 1890.

In the Supreme Court of the District of Columbia.

MARY E. PATTEN *et al.*, Complainants,
against
AUGUSTA P. GLOVER *et al.*, Defendants. } In Equity. 12234.

Now comes the said defendant John M. Glover, and, saving and reserving to himself all the benefits of all the exceptions to the amended bill of complaint in this cause on account of the many insufficiencies and imperfections thereof and without waiving the same or any thereof and asking that he may have the benefit of the same as if taken by demurrer, for his answer to the said bill, says:

1, 2. The defendant admits the averments of the first and second paragraphs of the bill.

3. The defendant denies the averments of the third paragraph of the bill, except that he admits the contents of the last will and tes-

tament of Anastasia Patten as the same shall truly appear when the original thereof is produced.

4. The defendant admits the averments of the fourth paragraph of the complaint.

5. The defendant admits the averments of the fifth paragraph of the bill, except he does not admit that the inventory referred to is correct, either in including all of the property of the estate of Anastasia Patten or in the valuations in the appraisement thereof.

6. The defendant denies the averments of the sixth paragraph of the bill.

7. The defendant denies the averments of the 7th paragraph of the bill, except as to that portion which is covered by demurrer incorporated in the thirteenth paragraph of this answer.

8. The defendant denies the averments of the eighth paragraph of the bill, except that portion which is covered by demurrer incorporated in the 14th paragraph of this answer.

9, 10, 11, 12. The defendant denies the averments of the ninth, tenth, eleventh, and twelfth paragraphs of the bill.

64 13. The defendant demurs to so much of the bill (seventh paragraph) as is comprised in the following words: "On the 17th day of February, 1887, as of the 1st day of January, 1887, the said testatrix paid on account of her said indebtedness to the defendant A. P. Glover, then Katherine A. Patten, the sum of, to wit, $102,800 by assigning and transferring to her, the said defendant, bonds of the United States of the par value of $80,000 and of the actual value of, to wit, $102,800, with benefit of the interest thereon since *the* January 1st, 1887," and to so much of the bill as touches the same subject-matter, and for grounds of demurrer states that the said allegations touching and in connection with the averments of complainants' bill is irrelevant and immaterial, made up of surplusage, and impertinent in a legal sense, and he further submits to the court that until the said Augusta P. Glover advances a claim against the estate of her mother, which she has not done, and there is no averment that she has done, the question as to whether that claim has been paid in full or in part cannot arise and particularly cannot arise under the other averments of this bill.

14. The defendant demurs to so much of the bill (paragraph eight) as is comprised in the following words: "The estate of the said testatrix now stands justly indebted to the defendant Augusta P. Glover in the sum of $101,600 as of the — day of September, 1885, subject to a credit of $102,800 as of the 1st day of January, 1887," and to so much of the bill as touches the same subject-matter, and for grounds of demurrer assigns the same grounds alleged in paragraph 13 of this answer.

15. The defendant says that at the date of the will of said Anastasia Patten she was indebted to her five children (meaning the four complainants and the defendant Augusta P. Glover) in the same sum, nature, amount, and degree each as heirs of Edmund Patten, and that, as appears by her said last will and testament, she devised her whole estate to them equally (with a trifling charge for legacies), and that of necessity thereby the complainants' said debts

were satisfied, as neither of the four could obtain as creditor any more than she would obtain by devise. The defendant says that the said will was made with the intent at the time on the part of the said testatrix that the legacies therein contained should pay and satisfy the said liabilities to complainants. The defendant further says that when the said will took effect each of the complainants obtained by virtue of the legacy therein enough to satisfy the said claim, and that the same are paid and satisfied.

16. Defendant says when each of the complainants (except Helen) arrived at the age of majority (or became *sui juris*) they authorized their mother, the testatrix, each of them, to invest the moneys belonging to them and each of them from the estate of their father in real and personal property in the name of the said Anastasia Patten; that they acquiesced in, assented to, and ratified, each of them, previous investments of their money made in the like manner during their minority; that by reason of the premises they became entitled to claim a proportionable interest in the property in which their money was invested, but the said Anastasia Patten having
65 acted by their authority in making the said investments after they arrived at years of capacity they have no claim whatever against her personally or against her estate by way of money demand for the money so invested and cannot sustain this action.

17. Defendant says that by virtue of the will of said testatrix, as the same will appear when a true copy thereof is produced, the defendant Augusta P. Glover was given an undivided one-fifth in specie of the entire personal estate of the said Anastasia Patten, the testatrix intentionally omitting to charge thereupon any debts or to make the legacy subject to the payment of debts. Defendant says that said Anastasia did not have at the time of the making of the will any debts to amount to anything except the debts to the complainants and the defendant above referred to, and that she intended that said legacies should be in lieu of and in satisfaction of said debts of complainants, as before stated. Defendant says that, as by the record in the cause will appear, the said Augusta P. Glover applied to this court, sitting as an orphans' court in special term, for an order on the complainants to pay the legacy of Mrs. Patten's brother, Mrs. Patten's sister, and St. Mary's hospital of the city of San Francisco; that for return to said application the complainants made affidavit that the estate of the testatrix was insufficient to pay to the complainants their claims and also to pay the legacies provided by the will. Defendant says that a legacy is in all cases a satisfaction of a debt if the assets are insufficient to satisfy the legacies also; and that for the additional reason stated the debts are satisfied by the bequests in the *the* will. Defendant further says that it is true that the personal assets of the estate of Anastasia Patten will not pay the legacies to John P. Flannery, Ellen Hamlin, and Saint Mary's hospital and also the claims as set up by the complainants in their bill as well as other debts. He also says that unless the legacies to the complainants are held to satisfy their claims that the legacy to the defendant Augusta will be disappointed and defeated, and that as a consequence the debts

of the complainants must be held satisfied by the legacies in the will.

18. The defendant further avers that before the impetration of the original writ in this cause directed to him and before the death of the testatrix more than twelve years had elapsed from the passing of the bond of the said testatrix as guardian for each of the complainants (except Helen) and six years had elapsed from the coming of each of them (except Helen) to full age; wherefore they ought not to have or maintain this action.

19. And, further answering, defendant avers that as to the alleged cause of action set up in the bill of complainants (if they mean to pretend the same as having arisen on the — day of September, 1885) that prior to the impetration of the original writ in this cause directed to this defendant and prior to the death of the testatrix more than three years had elapsed ensuing the cause thereof; wherefore the complainants ought not to have or maintain this action.

20. Defendant further avers that if the court should consider that the statute of limitations of the State of Nevada, where the
66 bonds of the testatrix as guardian were given, are to be applied to this action that by the laws of said State at and since the passing of the said bonds and at and since the date thereof an action could not and cannot be maintained on the liability of the said Anastasia Patten, as guardian, except within six years after the cause of action accrued thereon, and that more than six years from the accrual of the said cause of action to each of the complainants had elapsed before the impetration of the original writ in this cause directed to this defendant and before the death of the testatrix; wherefore the complainants ought not to have or maintain this action.

21. The defendant further avers that the claims of each of the said complainants were, upon the tenth day of May, 1889, presented, duly authenticated, to Augusta P. Glover as executrix of the estate of Anastasia Patten and by her rejected and disputed and all liability of the said estate thereon denied, and that between the said date and the impetration of the original writ in this cause directed to this defendant more than nine months had elapsed; wherefore the complainants ought not to have or maintain this action.

22. The defendant further avers that the complainant Helen was sixteen years of age September 11th, 1884, and twenty-one years of age September 11th, 1889.

23. The defendant asks to be hence dismissed with costs.

JOHN M. GLOVER, *Pro Se.*

I certify that in my opinion the foregoing demurrers are well founded in law.

JOHN M. GLOVER.

I certify that the foregoing demurrers are not interposed for delay.

JOHN M. GLOVER.

Subscribed and sworn to before me this 7th day of August, 1890.

[Seal Charles H. Payne, Notary Public, Kings County, N. Y.]

C. H. PAYNE,
Notary Public, Kings Co.

Cert. filed in N. Y. Co.

67 STATE OF NEW YORK, } ss:
City and County of New York, }

I, Edward F. Reilly, clerk of the city and county of New York and also clerk of the supreme court for the said city and county, being a court of record, do hereby certify that C. H. Payne has filed in the clerk's office of the county of New York a certified copy of his appointment as notary public for the county of Kings, with his autograph signature, and was at the time of taking the annexed deposition duly authorized to take the same, and that I am well acquainted with the handwriting of said notary public and verily believe that the signature to the annexed certificate is genuine.

In testimony whereof I have hereunto set my hand and
[SEAL.] affixed the seal of the said court and county the — day of Aug., 1890.

EDWARD F. REILLY, *Clerk.*

(Endorsed:) 12234. In the supreme court of the District of Columbia. Mary E. Patten *et al.*, complainants, against Augusta P. Glover *et al.*, defendants. Answer and demurrer of John M. Glover to amended bill. Filed Aug. 12, 1890. R. J. Meigs, clerk.

68 *Motion to Strike Out Demurrers of Defendant John M. Glover.*

Filed Aug. 22, 1890.

In the Supreme Court of the District of Columbia.

MARY E. PATTEN *et al*, Complainants,
vs.
AUGUSTA P. GLOVER and HUSBAND, Defendants. } Equity. 12234.

Come now the complainants, by their solicitor, and move the court to strike out the demurrers of the defendant John M. Glover to parts of the amended bill of complaint, to wit, the certain demurrer contained in the paper-writing denominated the answer of John M. Glover to part and demurrer to part of the amended bill, and, further, to require the said John M. Glover to answer the parts of the said amended bill so demurred to. And for grounds of this motion the complainants show that the said demurrers are in substance and effect the same as those interposed to the original bill by the said John M. Glover and heretofore overruled.

(Signed) HENRY E. DAVIS,
Solicitor for the Complainants.

(Endorsed:) Eq. No. 12234. Patten *et al. v.* Glover *et al.* Motion to strike out demurrers of John M. Glover to amended bill. Henry E. Davis, sol'r for compl'ts. Filed Aug. 22, 1890. R. J. Meigs, clerk.

69 Filed Oct. 8, 1890. R. J. Meigs, clerk.

In the Supreme Court of the District of Columbia.

MARY E. PATTEN *et al.*
against
AUGUSTA P. GLOVER *et al.* } In Equity. No. 12234.

Now comes Augusta P. Glover, by her counsel, and moves the court to allow her to file as her answer and demurrer to the amended bill the answer and demurrer last filed by her—that is, an answer and demurrer in all respects identical with the one last filed—and for grounds of said motion assigns—

That the answer and demurrer to the amended bill contain by inadvertence and mistake a traverse of the portion of the bill demurred to.

In connection with which motion she submits an affidavit of her counsel.

AUGUSTA P. GLOVER,
By JNO. M. GLOVER, *Solicitor.*

70 CITY AND COUNTY OF NEW YORK, *ss:*

John M. Glover, being duly sworn, upon his oath states that he is one of the defendants in the action of Patten *vs.* Glover, in the supreme court of the District of Columbia, in equity, No. 12234; that he is also counsel for Augusta P. Glover and was at the filing of her answer and demurrer to the original bill in this cause; that Mr. W. D. Davidge was also of counsel for the said Augusta P. Glover, and that together the said Davidge and this affiant drew the said answer and demurrer; that it was not the intention of either counsel to traverse the portions of the bill demurred to, and that the said traverse was entered by mistake and was unknown to and undiscovered by this affiant until the argument on the demurrer; that the mistake arose from the failure to observe that the answer referred to in plaintiffs' bill as having been filed in the orphans' court contained certain averments; that upon being notified by plaintiffs' counsel that he should move to strike out the said demurrer of Augusta P. Glover this affiant notified the said plaintiffs' counsel in writing by letter that at the hearing of said motion to strike out he would ask leave, on behalf of said Augusta P. Glover, to amend, which leave he was entitled to have asked under the said notice at the hearing of said motion, but that, the court declining to pass at the time on the motion to strike out and other business intervening, affiant did not think proper to call the said motion up at that time.

71 Affiant says that defendant Augusta P. Glover is prejudiced in her defense by the mistake aforesaid, and that the plaintiffs in this cause have twice been allowed to amend their bill by consent of the defendants and their counsel.

JOHN M. GLOVER.

Sworn to before me this 7th day of October, 1890.

[SEAL.] GEORGE FENN,
Notary Public, N. Y. Co.

(Endorsed:) In equity. 12234. Patten *vs.* Glover. Motion for leave to amend answer of Augusta P. Glover. Clerk will please file. Jno. M. Glover, solicitor. Filed Oct. 8, 1890. R. J. Meigs, clerk.

72 Filed Oct. 16, 1890. R. J. Meigs, clerk.

In the Supreme Court of the District of Columbia.

PATTEN *et al.* *vs.* GLOVER *et al.* } In Equity. No. 12234.

OCT. 16, 1890.

This cause coming to be heard upon an application made in behalf of John M. Glover for leave to file a cross-bill in this cause, it is ordered that leave be granted.

A. C. BRADLEY, *Justice.*

(Endorsed:) 12234, eq. doc. 30. Patten *vs.* Glover. Order granting leave to file a cross-bill. Filed Oct. 16, 1890. R. J. Meigs, clerk.

73 Filed Oct. 16, 1890. R. J. Meigs, clerk.

PATTEN *et al.* *vs.* GLOVER *et al.* } In Equity. No. 12234.

Now comes the defendant Augusta P. Glover and moves the court for a decree dismissing the bill in this cause on its merits for want of equity and for that the said bill shows on its face that the defendant is entitled to a decree on the merits in her favor.

AUGUSTA P. GLOVER,
By JOHN M. GLOVER, *Solicitor.*

(Endorsed:) Equity. No. 12234. Patten *et al. vs.* Glover *et al.* Motion to dismiss bill. Clerk will please file. John M. Glover, solicitor. Filed Oct. 16, 1890. R. J. Meigs, clerk.

74 *Cross-bill of Defendant John M. Glover.*

Filed Oct. 16, 1890.

In the Supreme Court of the District of Columbia.

MARY E. PATTEN *et al.*
vs.
AUGUSTA GLOVER *et al.* } No. 12234. Equity.

Now comes the defendant John M. Glover, and by way of cross-bill avers that—

1. He is a resident of the State of Missouri, and the defendants to this cross-bill are residents of the District of Columbia.

2. He sues in the same capacity in which he is sued in the bill, and the defendants are sued in their own right.

3. He and Augusta P. Glover are and have been husband and wife since February, 1887.

4. On the 10th day of May, 1889, at a special term of this court for orphans' court business, the defendants in this cross-bill filed in this honorable court a duly verified petition as follows:

In the Supreme Court of the District of Columbia, Holding a Special Term for Orphans' Court Business.

In the Matter of the Estate of ANASTASIA PATTEN, Deceased. No. 3234.

The petition of Mary E. Patten, Josephine A. Patten, Edith Patten, and Helen Patten respectfully shows:

1. That by due appointment and qualification by this court in that behalf they are, with their sister, Augusta Patten Glover, executrices of the last will and testament of the said Anastasia Patten, their late mother; that on, to wit, the 27th day of April, A. D. 1889, the petitioners duly returned into this court an inventory of the personal estate of the said deceased, together with the debts due her in the form of promissory notes secured by deeds of trust on real estate in the District of Columbia, the whole aggregating in amount
75 the sum of five hundred thousand one hundred and forty-eight dollars eighty-three and a third cents, but the said Augusta Patten Glover, although requested so to do by these petitioners, did not unite in returning said inventory at the time it was so returned as aforesaid, nor has yet so united, nor has she returned any other or different inventory in the premises.

2. That in her lifetime the said Anastasia Patten was indebted to the petitioners and the said Augusta Patten Glover under the circumstances and in the manner following: As children of Edmund Patten, late the husband of the said Anastasia Patten, they inherited from their said father an estate, which said estate was received, administered upon, and retained by their said mother, as their guardian; and on, to wit, the — of September, A. D. 1885, the

amount of indebtedness of the said Anastasia Patten in the premises on account of the estate aforesaid was adjusted, settled, and determined by mutual agreement of the said Anastasia Patten on the one part and on the other the petitioners and the said Augusta Patten Glover (then Katherine Augusta Patten), except the petitioner Helen Patten, who did not unite therein because she was at the time a minor of tender years; which said agreement was duly signed and executed by the petitioners and the said Augusta Patten Glover, except the said Helen Patten, and is in the words and figures following, to wit:

"Whereas our mother, Anastasia Patten, as guardian for us, received in the years 1873'-4'-'5, certain amounts of money, being our portion by inheritance of the estate of our deceased father; and

Whereas no special separate investments of the money so received have been made by our said guardian, but the same has been by her kept and safely invested in connection with moneys belonging to her in her own right derived from the said estate; and

Whereas our said guardian has up to the present date had entire charge of our maintenance and education, and has during the past thirteen years incurred a large amount of family expenses for our benefit, of which expenses no account has been kept by her; and

Whereas we and our said guardian are now desirous of settling the account between us in a just and equitable manner without attempting to secure technical accuracy in such settlement; and

Whereas our said mother and guardian has submitted to us for inspection all accounts and papers in her possession touching or relating to the receipts and disbursements entering into such accounting, and we have personally general knowledge concerning the family expenses during said period; and

Whereas from such examination and knowledge we believe that by a payment to each of us by our said guardian of the sum of $101,600 an equitable settlement will be made and full justice done to each of us:

Now, therefore, each of us for herself agrees to accept the said sum of $101,600 in full and complete settlement of all accounts, claims, and demands between us and each of us and our said mother and guardian, and in full satisfaction of all claims and de-
76 mands of whatever character arising out of or connected with the administration of said estate or the said relation of guardian and ward, and each of us for herself authorizes and requests that upon presentation of this agreement and a receipt for the above amount the court having jurisdiction thereof will, without further investigation of accounts so far as they concern either of us, pass the final accounts of our mother as administratrix and guardian, and by proper decree discharge those liable as bondsmen for her action in either capacity.

(Signed) MARY ELLEN PATTEN.
KATHERINE AUGUSTA PATTEN.
JOSEPHINE ANTOINETTE PATTEN.
EDITH PATTEN."

That the petitioner Helen Patten, being fully advised in the premises, now adopts and accepts said agreement and the settlement aforesaid as though she had duly participated in the same at the time of the making thereof, and that by virtue of the premises the said Anastasia Patten became and was indebted to each of the petitioners and the said Augusta Patten Glover, as of the — day of September, 1885, aforesaid, in the full sum of one hundred and one thousand six hundred dollars.

3. That on, to wit, the 17th day of February, 1887, as of the first day of January, 1887, the said Anastasia Patten, deceased, paid on account of her said indebtedness to the said Augusta Patten Glover (then Katherine Augusta Patten as aforesaid) the sum of, to wit, one hundred and two thousand eight hundred dollars, by assigning and transferring to her, the said Augusta Patten Glover (then Katherine Augusta Patten), bonds of the United States of the par value of eighty thousand dollars and of the actual value of, to wit, one hundred and two thousand eight hundred dollars, with benefit of the interest thereon since January first, 1887; that afterwards, to wit, on the 15th day of October, 1887, the said Anastasia Patten paid to each of the petitioners, on account of the several indebtednesses to them aforesaid, the sum of eleven thousand two hundred and fifty dollars, and that, besides the payments hereinbefore mentioned and specified, no other or further sum has been paid or secured to be paid to the petitioners or the said Augusta Patten Glover on account of the said several indebtednesses as aforesaid.

4. That by virtue of the premises the estate of the said Anastasia Patten, deceased, now stands justly indebted to the petitioners and the said Augusta Patten Glover to the extent hereinbefore indicated—that is to say, to the said Augusta Patten Glover in the sum of one hundred and one thousand six hundred dollars, as of the — day of September, 1885, subject to a credit of one hundred and two thousand eight hundred dollars, as of the first day of January, 1887, and to each of the petitioners in the sum of one hundred and one thousand six hundred dollars, subject to a credit of the 15th day of October, 1887, of eleven thousand two hundred and fifty dollars.

5. That, as the petitioners are advised, they may not retain for their said claims against the said Anastasia Patten, deceased,
77 hereinbefore set forth, unless the same be passed by this court, to which end they accordingly pray the court to pass upon their said several claims and authorize the payment of the same, and that to that end all necessary orders may be made, directions given, and proceedings had.

MARY E. PATTEN.
JOSEPHINE A. PATTEN.
EDITH A. PATTEN.
HELEN PATTEN.

HENRY E. DAVIS,
For the Petition.

DISTRICT OF COLUMBIA, *ss:*

Personally appeared before me, register of wills in and for the District aforesaid, the above-named Mary E. Patten, Josephine A. Patten, Edith Patten, and Helen Patten, who, being first duly sworn, depose and say that they know the contents of the foregoing petition by them subscribed; that the matters therein stated of their own knowledge are true and those stated on their information and belief they believe to be true.

MARY E. PATTEN.
JOSEPHINE A. PATTEN.
EDITH A. PATTEN.
HELEN PATTEN.

Subscribed and sworn to before me this 10th day of May, A. D. 1889.

DORSEY CLAGETT,
Register of Wills, D. C.

5th. An order to show cause (for which reference is made to the record in said cause) having been served upon the said Augusta P. Glover, thereafter, on the — day of ——, 1889, she filed in this honorable court a verified answer to the said petition as follows:

In the Matter of the Estate of ANASTASIA PATTEN, Deceased, No. 3234.

Augusta P. Glover, now showing cause, as required by the order passed on the 17th day of May, 1889, upon the petition of Mary E. Patten, Josephine A. Patten, Edith Patten, and Helen Patten, says:

1. The claims of the petitioners, who are executrices and claim also to be creditors, are not authenticated in the manner required by law to give jurisdiction to this court and enable it to pass any order in respect of said claims.

2. The said claims, as alleged, are several, and the claimants cannot unite in a joint petition.

3. The said claims of the petitioners, executrices and creditors, being contested by this respondent, this court cannot try title, as there is an adequate remedy in a court of equity.

78 4. The case presented by the petition is one of trust, within the jurisdiction of a court of equity, and whereof this court has no jurisdiction.

Wherefore, upon the foregoing grounds and each of them, this respondent says that the said petition should be dismissed.

And, without waiving the said exceptions to the jurisdiction of this court to proceed further, this respondent further says:

5. She admits that she and the petitioners are children and executrices as alleged, and that there was returned unto this court by the petitioners at or about the time alleged an inventory purporting to be an inventory of the goods and chattels of the deceased and money and stocks belonging to her, and also of certain debts secured by deed of trust, amounting in the aggregate to the alleged sum. It is true

that this respondent was requested by the attorney of the petitioners to unite in the return of the said inventory, and that she did not so unite nor has she since united or filed any other or different inventory. This respondent says that when so requested she was confined by sickness to her bed, as was fully explained to the said attorney; that the said inventory was sent to her chamber, and that upon the best examination she could give the said inventory she found that the same, so far as it went, was correct, but that it was not a full, true, and perfect inventory, as required by law, valuable articles belonging to the deceased being omitted, and especially there was, as she was informed and believed, an omission to return assets of the estate to the value of forty-five thousand dollars, consisting of evidences of debt, which were, with the other securities of the deceased, in her possession and belonging to her at the time of her death, which evidences of debt thus omitted from the inventory were, as this respondent charges upon information and belief, never given to the petitioners or any of them, and that these evidences of debt are what, on the unfounded assumption that they were so given, is set up in the said petition as a payment to each of the petitioners on account of eleven thousand two hundred and fifty dollars (in all forty-five thousand dollars) in support of the pretended theory of indebtedness set up in the petition. The respondent says that although she is an executrix under the will of the said Anastasia Patten, and although the said assets were, as aforesaid, in the possession of the decedent at her death and a part of her estate, the complainants and their agents, though often requested, had at the time of the said inventory refused to give this respondent any information as to the nature of the claim or title they alleged to the said property or when or where the transfer to them, if any, was made or the particulars thereof, so as to enable this respondent to prepare the said inventory or to allow the said respondent to inspect the papers said to be connected therewith, but concealed the same and the said assets from the said respondent, whereby she was unable to sign the said inventory in the absence of such information; and respondent further says that she advised the said complainants that it would be necessary for her to know, in order to make the said inventory, from them whether they claimed the said assets by virtue of a gift or payment or
79 otherwise and the particulars thereof, and that the said respondent, being so advised, refused to make any disclosure touching the same. The respondent is still confined to her chamber, but so soon as sufficiently recovered it is her intention to take such action in respect to the said inventory as in equity and conscience may be proper and her duty as executrix may require.

6. The father of the respondent and the petitioners, Edmund Patten, was a citizen of the State of Nevada, and died in Gold Hill, in said State, in the year 1872, leaving a large estate—some real estate, but the great bulk personal property. By the laws of Nevada, in which State he was domiciled, and of Nevada and California, in which said property was situated, the title to the said estate vested at his death in his widow, the mother of the respondent and peti-

tioners, the said Anastasia Patten, as to one undivided moiety and in his children, this respondent and the petitioners, in equal parts as to the other undivided moiety, the said Edmund Patten having died intestate. Letters of administration were issued to the said Anastasia Patten upon the estate of her said husband, and she also received letters of guardianship of her said children, all of whom were infants at the decease of their father, and thereby practically became invested with title to and control over both moieties of the said estate, one in her own right and the other as trustee for her said children. The said estate was never divided nor did the said testatrix ever settle her final account as administratrix or any account, whether annual or final, as guardian, as she is informed and believes. The power over the whole estate which thus vested in her was exercised with the best motives and with rare skill and judgment. At the date of the will it consisted almost entirely of about one million dollars in United States bonds. The original investments were changed and new investments were made from time to time, in which there was no distinction made in respect to the said moieties, and under her management, acquiesced in by the said children and expressly agreed to by each of them as they came of age, the estate rapidly increased in value, and that in pursuance of this understanding and agreement that the funds of the different wards should be invested and reinvested in the name of the said Anastasia Patten no one ever called her to account as guardian, although nearly ten years had elapsed since the majority of Mary E. Patten, the eldest child. In September, 1885, it became apparent to the testatrix either by the suggestion of her bondsmen in the State of California upon her bond as guardian of her said wards or otherwise that steps should be taken to enable her to formally close her accounts as administratrix and guardian, and that for the purpose of enabling her to do so the paper set out in the petition was drawn and at her request and without any knowledge or means of knowledge of the correctness of its statements and provisions was signed by this respondent and such of the other children as had then attained the age of 21 years. No papers, vouchers, or accounts were submitted and no investigation or examination of any form or kind was made by any of the wards. The said paper when drawn and signed was never delivered to the children or any of them, but was
80 retained by their mother and at her decease was found among her papers. There was no consideration of any sort moving to the said children or any of them for the execution of the said paper. The amounts agreed by the terms of said paper to be accepted by the said children were never paid, nor was any evidence of indebtedness given to the said children or any of them, nor was the said paper signed by their mother, nor was any evidence of indebtedness given by her to the said children or any of them, nor was any money or any part of the said estate representing the sums agreed by the terms of the said paper to be accepted separated from the residue of the said estate or paid to the said children or any of them, nor was any evidence of the relinquishment of the interest in the said estate of the said children or any of them

given or requested, nor were the receipts mentioned in the said paper for presentation to the said court having jurisdiction, or any of them, given or requested by their mother, nor was anything done in execution of the pretended purposes of the said paper (as pretended in said petition) to work the relinquishment and sale by the said children of their interest in the moiety of the said estate held in trust for them, but that after the execution of the said paper the said interest continued exactly as before and, together with the other moiety, was indiscriminately invested and reinvested for the benefit of the said children and their mother as if the said paper had never been executed, and with such success that the value of the said estate between the execution of the said paper and her death was more than doubled. This respondent therefore denies that the trust existing before the execution of the said paper as to a moiety of the said estate was extinguished by the said paper, or intended so to be, or that the interest of the said children in the moiety of the said estate held in trust was converted or intended to be converted into a money demand provable in this court, and she avers that if the said paper be construed as defining in money the value of the interest of the said children in the said estate the said interest continued to be held in trust, and that if the paper could be regarded as an agreement by distributees and wards to give to the testatrix the option to liquidate or purchase their interest in the common property at a specified sum for the protection of her bond in California, as before described, that the said option was never exercised or agreed to be exercised by the said testatrix, and that, in any view which can be taken of the said papers, the will of the said Anastasia Patten, proved and recorded in this court and of which this respondent and the petitioners are the executrices, whereby the testatrix devised, subject to certain bequests of comparatively trifling amount, all her estate, real and personal, as well the interest of the respondent and the petitioners therein, held in trust for them as her own interest in the said estate, operated the extinguishment and discharge of any claim on the part of the said devisees, and that said claims ceased to be provable as debts against the said estate; and that the said extinguishment and discharge are not affected by the fact that your respond-
81 ent and the petitioners, obtaining all the trust property, both their own interest and their mother's, took title to the real-estate part of said property by descent instead of by devise in consequence of the attestation of the said will by only two witnesses.

This respondent further says that whatever the legal effect of the said paper the claims set up by the complainants and each of them in their petition against the estate of their mother were, if they ever existed, by the will, proved and recorded in this court and referred to as part hereof, whereby she devised and bequeathed, subject to certain bequests, all her estate to the said children, share and share alike, extinguished and paid.

7. The averments of the third paragraph of the petition are not true. The relation of the said Anastasia Patten and her said chil-

dren was, as recognized and treated by her to the day of her death, that of trustee and *cestuis que trust.*, and not of debtor and creditors. The alleged indebtments were never recognized or acted upon by her and no part payments were made by her on account thereof. The pretended part payments to the petitioners have no other foundation, as this respondent is informed and believes, than the claim by the petitioners that evidences of debt amounting to forty-five thousand dollars, the title whereto was in the decedent and which at her death were in her possession as aforesaid, had been given by her to them, and this respondent denies alike the transfer of the said evidences of debt in the petition styled payments, and that the said transfer was on account of the said alleged indebtments; and, having fully answered, this respondent prays she may be dismissed with costs, &c.

AUGUSTA PATTEN GLOVER.

DISTRICT OF COLUMBIA, *ss:*

I do solemnly swear that I have read the foregoing return to the order to show cause by me subscribed and know the contents thereof, and that the facts therein stated upon my personal knowledge are true and those stated upon information and belief I believe to be true.

AUGUSTA PATTEN GLOVER.

Subscribed and sworn to before me this 27th day of May, A. D. 1889.

[SEAL.] G. M. FAGUE,
Notary Public.

6th. That thereupon the said cause was, on the motion of plaintiffs, brought on for hearing on bill and answer, no replication having been filed and no testimony taken, and on the 13th day of June, 1889, the Hon. W. S. Cox, justice of this court, holding a special term, made the following order, now of record in this court:

82 In the Supreme Court of the District of Columbia, Sitting in Probate.

In the Matter of the Estate of ANASTASIA PATTEN, Deceased. No. 3234.

The petition of Mary E. Patten, Josephine A. Patten, Edith Patten, and Helen Patten, with the answer thereto of Augusta P. Glover, in pursuance of the rule to show cause, now came on to be heard and was argued by counsel and considered by the court, and it appearing to the court that the said petition presents a subject-matter within the jurisdiction of the court, but that the claims of the petitioners cannot be determined by this court without the determination of matters whereof this court has not jurisdiction, such as the effect upon the said claims of the will of the testatrix, the payment to respondent on account, as alleged and denied, and other

matters, it may be, it is therefore ordered, adjudged, and decreed this 13th day of June, 1889, that further action upon the said petition be, and the same is hereby, suspended until said other matters whereof this court has not jurisdiction shall be first tried and determined in the appropriate tribunal in such manner as counsel may advise.

W. S. COX, *Justice.*

6th. That on the 8th day of January, 1890, the original bill of complaint was filed in this cause, and on the 30th day of July, 1890, the amended bill in which this cause is proceeding on the part of the plaintiffs.

7th. In consideration of the premises the complainant prays:

A. That process issue commanding the defendants to appear and answer the exigency of this bill.

B. That defendants be required to answer the bill upon their corporal oaths.

C. That a decree be entered that the estate of Anastasia Patten is not indebted to the complainants on account of their inheritance from their father or decedent's relation as guardian or administrator in any amount of money.

D. That the defendants be perpetually enjoined from setting up any claim against said estate on account of their inheritance from their father or decedent's relation as guardian or administrator.

E. Or for such other and further relief as to the court may seem proper.

JOHN M. GLOVER.

John M. Glover, being duly sworn, states that he has read the foregoing bill of complaint and knows the contents thereof, and that the statements therein made are true to his knowledge.

JOHN M. GLOVER.

Sworn to before me October 16, 1890.

R. J. MEIGS, *Clerk,*
By M. A. CLANCY,
Ass't Clerk.

(Endorsed:) Equity. No. 12234. Patten *et al. vs.* Glover *et al.* Cross-bill. Clerk will please file. John M. Glover, solicitor. Filed Oct. 16, 1890. R. J. Meigs, clerk.

83 In the Supreme Court of the District of Columbia.

MARY E. PATTEN *et al.*, Complainant-,
against
AUGUSTA P. GLOVER *et al.*, Defendant-. } No. 12234; Equity Docket 30.

OCTOBER 16, 1890.

The President of the United States to Mary E. Patten, Josephine A. Patten, Edith Patten, and Helen Patten, defendants:

You are hereby commanded to appear in this court at its first special term occurring ten days after the service of this subpœna,

and answer the exigency of the cross-bill, under pain of attachment and such other process of contempt as the court shall award.

Witness E. F. Bingham, chief justice.

[Seal of the Supreme Court of the District of Columbia.]

R. J. MEIGS, *Clerk, &c.*,
By L. G. WILLIAMS, *Ass't Cler-.*

MEMORANDUM.—That the defendant- herewith served *is* to
84 enter appearance in this suit in the clerk's office on or before the day at which this writ is returnable; otherwise the bill may be taken for confessed.

(Endorsed:) No. 12234, equity docket 30. Spa. to ans. cross-bill. Mary E. Patten *et al. vs.* Augusta P. Glover *et al.* Subpœna to answer issued Oct. 16, 1890. Returned Nov. 3, 1890. Served all the within-named defendants October 25, 1890. D. M. Ransdell, marshal. Jno. M. Glover. Rec'd by marshal Octo. 25, 1890.

85 *Additional Answer of Defendant Augusta P. Glover.*

Filed October 21, 1890. R. J. Meigs, clerk.

In the Supreme Court of the District of Columbia.

PATTEN *et al.*
vs.
GLOVER *et al.* } Equity. No. 12234.

Now comes the defendant Augusta P. Glover and denies that portion of paragraph 7th of the bill which alleges: "That, to wit, on the 17th day of February, 1887, as of the first day of January, 1887, the said testatrix paid on account of her said indebtedness to the defendant, then Catherine Augusta Patten, as aforesaid, the sum of, to wit, $102,800, by assigning and transferring to her, the said defendant, bonds of the United States of the par value of $80,000 and of the actual value, to wit, $102,800, with benefit of the interest thereon since January 1st, 1887."

And also that portion of the bill, paragraph 8, which avers: "The estate of the said testatrix now stands justly indebted to the defendant Augusta P. Glover in the sum of $101,600 as of the — day of September, 1885, subject to a credit of $102,800 as of the first day of January, 1887."

AUGUSTA P. GLOVER,
By JOHN M. GLOVER, *Solicitor.*

(Endorsed:) Equity. No. 12234. Patten *et al. v.* Glover *et al.* Answer of Augusta P. Glover to portions of amended bill. John M. Glover, solicitor. Filed Oct. 21, 1890. R. J. Meigs, clerk.

86 *Additional Answer of Defendant John M. Glover.*

Filed October 21, 1890. R. J. Meigs, clerk.

In the Supreme Court of the District of Columbia.

PATTEN *et al.*
vs.
GLOVER *et al.* } Equity. No. 12234.

Now comes the defendant John M. Glover and denies that portion of paragraph 7th of the bill which alleges: "That, to wit, on the 17th day of February, 1887, as of the first day of January, 1887, the said testatrix paid on account of her said indebtedness to the defendant, then Catherine Augusta Patten, as aforesaid, the sum of, to wit, $102,800, by assigning and transferring to her, the said defendant, bonds of the United States of the par value of $80,000 and of the actual value of, to wit, $102,800, with benefit of the interest thereon since January 1st, 1887."

And also that portion of the bill, paragraph 8th, which avers: "The estate of the said testatrix now stands justly indebted to the defendant, Augusta P. Glover, in the sum of $101,600 as of the — day of September, 1885, subject to a credit of $102,800 as of the first day of January, 1887."

JOHN M. GLOVER, *Pro Se.*

(Endorsed:) Equity. No. 12234. Patten *et al v.* Glover *et al.* Answer of John M. Glover to portions of amended bill. Clerk will please file. John M. Glover. Filed Oct. 21, 1890. R. J. Meigs, clerk.

87 *Decree Overruling Demurrer of Defendant John M. Glover.*

Filed Oct. 23, 1890. R. J. Meigs, clerk.

In the Supreme Court of the District of Columbia.

MARY E. PATTEN *et al.*, Complainants,
vs.
AUGUSTA P. GLOVER and HUSBAND, Defendants. } Equity. 12234.

This cause coming on for consideration upon the demurrer of the defendant John M. Glover to parts of the amended bill of complaint, and also on the motion of the defendant Augusta P. Glover for leave to amend her answer to the original bill of complaint, and being by the court considered, it is this 23rd day of October, A. D. 1890, adjudged, ordered, and decreed that the said demurrer of the defendant John M. Glover be, and the same hereby is, overruled, and that the said motion of the defendant Augusta P. Glover be, and the same hereby is, denied.

(Signed) A. C. BRADLEY, *Justice.*

(Endorsed:) Eq. No. 12234. Patten *et al. v.* Glover *et al.* Decree overruling demurrer and denying motion for leave to amend answer. Filed Oct. 23, 1890. R. J. Meigs, clerk.

88 *Replication.*

Filed Nov. 5, 1890. R. J. Meigs, clerk.

In the Supreme Court of the District of Columbia

MARY E. PATTEN and Others, Complainants,
against
AUGUSTA P. GLOVER and HUSBAND, Defendants. } Equity. No. 12234.

The complainants hereby join issue with the defendants on their answers to the amended bill of complaint as filed July 15th, 1890.

(Signed) HENRY E. DAVIS,
Solicitor for the Complainants.

(Endorsed:) Eq. 12234. Patten & others *vs.* Glover & husband. Replication to answers to amended bill. H. E. Davis, sol'r. Filed Nov. 5, 1890. R. J. Meigs, clerk.

89 *Demurrer to Cross-bill of Defendant John M. Glover.*

Filed Nov. 14, 1890.

In the Supreme Court of the District of Columbia.

MARY E. PATTEN and Others, Complainants,
vs.
AUGUSTA P. GLOVER and HUSBAND, Defendants. } Equity. No. 12234.

The demurrer of Mary E. Patten, Josephine A. Patten, Edith Patten, and Helen Patten, defendants, to the cross-bill of John M. Glover, filed October 16th, 1890, in the above-entitled cause.

The said defendants respectively, by protestation, not confessing or acknowledging all or any of the matters and things in the said cross-bill to be true in such manner and form as the same are therein set forth and alleged, do demur thereto and for cause of demurrer show:

That the said John M. Glover in the said cross-bill has not in and by his said cross-bill shown such a relation between himself and these defendants or any of them or any such right or title as entitles him to the discovery and relief or either of them from these defendants or any of them by the said cross-bill prayed.

And for a further cause of demurrer these demurrants show that the said complainant in the said cross-bill has not in and by his said cross-bill made or stated such a case as does or ought to entitle

him to any such discovery or relief as is thereby sought and prayed for from or against these demurrants or any of them.

Wherefore these demurrants respectively demand the judgment of this court whether they shall be compelled to make any further or other answer to the said cross-bill or any of the matters and things therein contained, and pray hence to be dismissed with their reasonable costs in this behalf sustained.

HENRY E. DAVIS,
Solicitor for the Complainants, Who are Defendants to the Cross-bill.

90 DISTRICT OF COLUMBIA, *ss:*

Personally appeared before me Mary E. Patten, Josephine A. Patten, Edith Patten, and Helen Patten, who, being by me severally sworn, do severally depose and say that the foregoing demurrer is not interposed by them or any of them for delay.

MARY E. PATTEN.
JOSEPHINE A. PATTEN.
EDITH PATTEN.
HELEN PATTEN.

Subscribed and sworn to before me this 14th day of November, A. D. 1890.

[SEAL.] JOHN E. MITCHELL,
Notary Public.

I hereby certify that in my opinion the foregoing demurrer is well founded in point of law.

HENRY E. DAVIS.

(Endorsed:) Equity. 12234. Mary E. Patten *et al. vs.* Augusta P. Glover and husband. Complainants' demurrer to cross-bill of John M. Glover. Henry E. Davis, solicitor. Filed Nov. 14, 1890. R. J. Meigs, clerk.

91 Filed Dec. 29, 1890. R. J. Meigs, clerk.

In the Supreme Court of the District of Columbia.

PATTEN *et al.* *v.* GLOVER *et al.* } Eq. 12234.

Upon motion, it is this 29th day of December, A. D. 1890, ordered by the court that the plaintiffs be allowed forty-five day- wherein to take their testimony-in-chief; the defendants are to have forty-five days, to date from termination of plaintiffs' testimony, wherein to take their testimony, after which ten days is to be allowed plaintiffs wherein to close their testimony in rebuttal.

A. C. BRADLEY, *Justice.*

(Endorsed:) 12234, eq. doc. 30. Patten *vs.* Glover. Order limiting time to take testimony to 100 days. Filed Dec. 29, 1890. R. J. Meigs, clerk.

92 MARY E. PATTEN and Others, Complainants, *vs.* AUGUSTA P. GLOVER & HUSBAND, Defendants. } Equity. No. 12234.

Testimony in Behalf of the Complainants.—Alexander H. Galt, Examiner.

Fee, $400.
Paid.
A. H. G., *Ex'r.*

Filed Jun- 13, 1891.

R. J. MEIGS, *Clerk.*

93 In the Supreme Court of the District of Columbia.

MARY E. PATTEN *et al.*, Complainants, *vs.* AUGUSTA P. GLOVER and HUSBAND, Defendants. } Equity. No. 12234.

DISTRICT OF COLUMBIA, *County of Washington,* } *ss:*

Be it remembered that at an examination of witnesses begun and held on the 28th day of January, A. D. 1891, and continued from time to time until the 28th day of April, A. D. 1891, when the within depositions were taken, I, Alexander H. Galt, an examiner in chancery, did cause to be personally present at the office of Henry E. Davis, Esquire, No. 344 D street N. W., in the city of Washington, in said District, C. J. Hillyer (p. 1), C. C. Glover (p. 28), Benj. P. Snyder (p. 33), R. R. Perry (p. 54), John E. Beall (p. 63), Josephine A. Patten (p. 138), Helen Patten (p. 26), Mary E. Patten (p. 293), Edith Patten (p. 361), Wm. J. Flather (p. 420), Wm. M. Stewart (p. 429), to testify on the part and behalf of the complainants in a certain cause now pending in the supreme court of the District of Columbia, wherein Mary E. Patten and others are complainants and Augusta P. Glover and husband are defendants.

Which said examination was had after due notice and at which, on the day aforesaid, there were present Henry E. Davis, Esquire, for the complainants, and John M. Glover, Esquire, for the defendants.

ALEXANDER H. GALT, *Examiner.*

94 Whereupon C. J. HILLYER, a witness of lawful age, produced on the part and behalf of the complainants, being first duly sworn, deposes and says as follows:

By Mr. DAVIS:

Q. Please state your name and residence.

A. My name is C. J. Hillyer; lawyer; I reside at No. 2121 Massachusetts avenue.

Q. How long have you resided there?

A. I have resided there for fifteen years.

Q. Did you know Edmund Patten, late of Nevada?

A. I was very well acquainted with him for a good many years.

Q. Did you know his wife, afterwards his widow, Anastasia Patten, late of this District?

A. Very well.

Q. How long did you know her?

A. Well, I had known her since 1854.

Q. Do you remember the time of her coming to the city of Washington to live?

A. Very well.

Q. Where did she live in this city?

A. She first lived at the Arlington hotel for a while and then she built a house opposite me on Massachusetts Ave. and lived in that.

Q. Until her death?

95 A. Yes, sir.

Q. Where did you know Edmund Patten, her husband?

A. Where did I know him?

Q. Yes, sir.

A. I knew him first at Iowa Hill, in Placer county, California; then I was for a number of years acquainted with him in Virginia City, Nevada.

Mr. GLOVER: I would like to make a general objection to the introduction of any evidence at all under this bill upon the ground that the averments of the petition are conclusive against the complainants on all grounds.

Mr. DAVIS: It is agreed by counsel that this objection may be considered as having been made before the swearing of the witness.

(By Mr. DAVIS:)

Q. Do you know where he died?

A. At Virginia City—that is, Gold Hill—which is the same place.

Q. Do you know when he died, approximately?

A. Well, I know approximately; I do not know that I may be certain about the year.

Q. About when was it?

A. I think it was about 1873.

Q. Do you know who administered his estate, if any one?

Mr. GLOVER: I object to the preceeding question on three grounds:

The first ground is that that cannot be proven by a parole,
96 the second is it is immaterial, and the third is it is fixed by the pleadings.

A. I do not know; I would state that I supposed Mrs. Patten was the administratrix or executrix; I do not remember.

Q. Do you know how many, if any, children Mr. Patten left?

A. Five—five girls.

Q. Who was their guardian, if you know?

Mr. GLOVER: Same objection as to the above question in regard to the administratorship.

A. I was informed that Mrs. Patten was their guardian.

Q. By whom?

A. By herself, and my impression is also by some of the girls.

Q. After Mrs. Patten's removal to Washington did you or not have any relations towards her in connection with her guardianship of her children?

A. Mrs. Patten consulted me, asking my advice about what she should do in reference to the guardianship.

Q. Do you remember when that was?

A. I think it was in 1885—the summer.

Q. Do you remember under what circumstances she first consulted you in that connection?

Mr. GLOVER: I do not suppose that Judge Hillyer is going to testify—I do not suppose he would do it on his own account—to a conversation with Mrs. Patten in a professional relation.

97 The WITNESS: I shall testify to anything that is asked me that I know.

Mr. GLOVER: Whether it was while you were acting as her attorney or not?

Mr. DAVIS: I am not asking that; I have documents that will show that.

Mr. GLOVER (to Mr. Davis): I would like to have you tell me if you mean to elicit that. If you do, all I can do is to object. I want to call the witnesses' attention to the fact that it is not professional.

The WITNESS: I think the witness understands what is professional.

Mr. GLOVER: I want to object to the last question, as it appears from the preliminary statement made by Judge Hillyer that he was consulted professionally by Mrs. Patten touching the guardianship of the children and legal matters connected therewith, and that he is not a competent witness to such things.

A. Yes; Mrs. Patten was at our house quite often and talked over her business matters, probably as freely with me as she did with anybody, and it came out in course of conversation with her that she had not settled up her accounts in the probate court in Virginia City, and I told her that I thought she ought not to allow those

things to run along loosely in that way as she was doing, but
98 that some kind of settlement should be made with the children; and, if possible, of her accounts. That was the way the conversation originated.

Mr. GLOVER (interrupting): I object to that answer.

The WITNESS (continuing): I will state that I was never employed by Mrs. Patten—that is to say, she never paid me anything as an attorney, and I never understood that there was anything to be paid; she consulted me as a friend, and not otherwise.

Mr. GLOVER: I object to the answer on the ground that the question of compensation does not touch it at all; that the previous answer shows that the witness was consulted professionally on account of his legal learning, and that he is not permitted under the law to give evidence of the kind that he is giving.

Q. I was on the point of asking you, Judge Hillyer, what your relation to Mrs. Patten in this matter was.

A. I have already stated in answer to the last question.

Q. Do you know whether or not Mrs. Patten had an attorney at Virginia City at that time?

A. Yes, sir.

Mr. GLOVER: I object to that as immaterial, both question and answer.

Q. Who was it?

A. Mr. W. E. F. Deal.

Q. Had you or not any correspondence with Mr. Deal in relation to the matter of settling Mrs. Patten's accounts?

99 Mr. GLOVER: I object to that as immaterial, irrelevant, as a breach of the privilege between client and attorney, and as not competent evidence on the question of satisfaction, being subsequent to the date of the will, or on any other question involved in the issues raised by the pleadings.

A. Yes, sir; I had. I wrote to him once or twice and he wrote to me.

Q. Do you know Mr. Deal's handwriting when you see it?

A. Yes, sir.

Q. (Handing witness a paper.) Look at the paper now shown you and state if that is in his handwriting.

A. (After examining paper.) Yes, sir.

Q. What is that paper?

A. It is a letter to me.

Q. From whom?

A. From Deal.

Counsel for defendants having examined the paper:

Mr. DAVIS: Counsel for the complainants here offers in evidence the letter just identified by the witness, and the same is marked "Complainants' Exhibit No. 1," and is in the following words:

Mr. GLOVER: Before the introduction of which counsel for de-

fendants objects to the introduction of said letter, because the testimony shows it to be correspondence between the attorneys
100 of Mrs. Patten, because it is irrelevant and immaterial, and because, so far as its contents are concerned, they are hearsay and inadmissible, and because this evidence, being subsequent to the date of the will, is on that ground inadmissible.

The letter referred to is as follows:

"Law office of W. E. F. Deal.

VIRGINIA CITY, NEVADA, *June* 10, 1885.

MY DEAR MR. HILLYER: I have sent the accounts to Mrs. Patten, so far as I was able to make them out. There are several items of which I know nothing definitely, as they were either settled by Mrs. Patten or the amount was rec'd in a check or draft and sent by me to her.

It seems to me there is but one safe way to settle the estate of the daughters, and that is by filing the accounts in court here and have them settled and make distribution by decree of the court.

Whatever settlement might be made out of court might at some time be the subject of dispute. In case of marriage of any of the daughters the husbands might at some time through their influences make trouble.

The sureties on the bonds of Mrs. Patten as guardian might also insist for their protection on having the estate settled in court.

The money distributed in San Francisco was invested
101 in U. S. bonds, and the interest paid should be added.

There was an allowance of $500 per month made by the probate court in San Francisco during the administration and paid. This allowance is charged in the final account in San Francisco and amounted to $5,000. This was for the support of the family for 10 months.

The distribution made in San Francisco was of the balance after paying all expenses.

If the items are supplied that I have omitted, I could make out the account. Mrs. Patten is entitled to credit for all expenses since Nov. 16, 1873. She is also entitled to credit for her commissions both on the amount of estate as administratrix and on amount to be distributed as guardian.

Mrs. Patten could settle with her daughters upon a full accounting to them and taking from each as they became of age a receipt and release. This might save the expense at the time, but, as you know, there would be the danger of endless disputes and of ruinous litigation.

I think by all means the settlements should be made by the court. If that course is pursued, there never can be any trouble. Four of the daughters are now of legal age. They can employ their own attorney, and I would advise Mrs. Patten to insist upon it. The youngest could have an attorney appointed by the court.

It has taken me some time to look up the books and papers,
102 and fortunately they were saved from the fire. The court papers were all destroyed by the fire of 1875.

If the course is pursued I have advocated and the accounts I have omitted are sent me, with the expenses of educating and maintaining the daughters, I can add the legal charges and percentages and make the accounts out in proper form and wind up the estate.

Yours truly,

(Signed) W. E. F. DEAL."

(By Mr. DAVIS:)

Q. (Handing witness a paper.) Please look at the paper now shown you and state in whose handwriting it is.

A. (After examining paper.) Mr. Deal's handwriting.

Q. And what is that paper?

A. It appears to be a letter to Mrs. Patten from Deal.

Mr. DAVIS: Counsel for the complainants offers in evidence the paper just identified by the witness, and the same is marked "Complainants' Exhibit No. 2" and is as follows:

Mr. GLOVER: Before the introduction of which as evidence counsel for the defendants objects to its introduction on the same grounds which were offered as objections to the introduction of the first paper, marked "Complainants' Exhibit No. 1."

The paper referred to is as follows:

103 "Law office of W. E. F. Deal.

VIRGINIA CITY, NEVADA, *June 10th*, 1885.

MY DEAR MRS. PATTEN: Mr. Hillyer wrote to me for some information with reference to the estate of your daughters. I have completed the accounts so far as I am able to do from the papers I have. The statement I send where I give figures is correct, but as some of the matters were attended to by you I could not furnish the amounts. For instance, you settled with Senator Stewart. You also settled with reference to the Newry claim, at Iowa Hill. I received the check or draft in settlement with estate of James McDonald, deceased, and sent the draft to you without keeping any memorandum of the am't. You also transacted the business of the sale of the St. Paul property.

I send these accounts to you to look over them and supply the items I have omitted.

I think the only way to settle the estate is to file your accounts as guardian in each estate and have them settled by the court. Of course you can settle with those who are of age by giving them a full statement of everything and taking their receipts for the amounts due, but the bondsmen on your bond as guardian would not be safe without a settlement by the decree of the court.

You might also be subject to trouble by having the settlements questioned at some future time.

104 I do not suppose for a moment that there would ever be any trouble, but there is a way to prevent trouble and but one way, and that is to file your accounts in court, have them settled by a decree of the court, and make distribution by a decree and get your discharge as guardian and the discharge of your sureties on your official bond.

Please acknowledge the receipt of this, so that I may know you have received it. I have not for years past had any acknowledgment of any paper I have sent you, though I have attended to the preparation of them as carefully as I could.

Mrs. Deal and the children are well and join me in love to yourself and daughters.

Yours truly,

(Signed) W. E. F. DEAL."

(By Mr. DAVIS:)

Q. How long have you known Mr. Deal?

Mr. GLOVER: Objected to as irrelevant and immaterial.

A. I have known Mr. Deal since 1864.

Q. In what, if any, relation, did he at any time stand to you?

Mr. GLOVER: Same objection.

A. He was at one time, for some time, a clerk in my law office and afterwards my law partner for a few years.

Q. Do you or not remember discussing with Mrs. Patten the matter contained in these two letters which have just been shown you?

105 Mr. GLOVER: Objected to as a breach of professional relation between the witness and the decedent.

A. Yes; I remember it.

Q. Now, to save multiplying questions, will you be good enough to state in your own way what passed between you and Mrs. Patten after these letters were received and your whole relation to the matter from that point?

Mr. GLOVER: Same objection.

A. Well, I think that our first conversations were prior to those letters, and that the letters were rather the consequence of the conversations. Mrs. Patten, after she had explained that these accounts were open and had told me that she was unable, from the fact that she had not kept the vouchers of her expenses, to make out an accurate account, I told her that the matter ought to be settled up in some way, and that if she was not able to make out an accurate account she should make as fair an account as she could and settle it with the girls by an agreement, my idea being and telling her that I presumed the girls would agree to whatever was fair in the matter, and that three or four of them were then of age and were able to bind themselves by an agreement, and that the other could when she became of age, and with that paper, settlement made, she

would not only by that paper arrange the matter so that there would be no difference of opinoin in the future, but she would be able to take it to the probate court of Virginia City, and by filing it, without having to go through the formality of making out the final
106 account in detail, I had no doubt but that she could have her final account allowed and sureties discharged. She said, after we had talked it over considerably and corresponded a good deal about it, that she would do it. Mr. Deal, as you see by his letter, wrote that he thought the better way was to try and make out the account in the regular way in the court, but that was conditional upon Mrs. Patten being able to furnish the proper data for the account, the vouchers, which she was not able to do, as she said she had kept no account of any of these expenses from the time of her husband's death, no accurate account. Then I said to her, "Now, take into consideration the amount which Mr. Patten's estate was worth at the time of his death, what was left, and what it was valued at (figures which she gave me), and taking also the amount of property that you have now, including, of course, that which belonged to the children as well as to yourself, and make the best estimate you can with regard to what their proportion would have yielded if properly invested and what expenses you have been to on their account; try to make out what would be a fair sum to be paid to each of them and settle it up to this date," and she did that; she gave me what I have no doubt was a correct account and told me everything she could about it, just what property she had and what value was put upon it. Of course we had the figures as to the value of the estate at the time of Mr. Patten's death, and she told me about the expenses that she had incurred, and upon that basis I made the figures and came
107 to the conclusion that if she paid to the girls each of them at that time a certain sum (I think it was one hundred and one thousand and some odd dollars, one hundred and one thousand some hundred dollars) that I thought that would be fair, fair to them and fair to her, and advised her to do it and she did. She asked me to prepare a paper, an agreement, which I did prepare, and she said she would get it signed, and she afterwards told me she had got it signed by and I supposed it to have been signed by all; she told me it had been signed by all of them. Of course I advised her to have them all sign it, though one or two of the girls were under twenty-one years of age—one girl was—and I told her that as soon as she got this paper signed (it was made in duplicate, two copies of it) it should be forwarded to Mr. Deal and see whether or not he could not have her final account allowed in the probate court.

A. I suppose she had done that, and after that I do not remember that I ever had any further conversation with her on the subject.

Q. Did you, in advising Mrs. Patten in the manner indicated, advise her orally or in writing?

A. Well, most of it was oral; I presume I may have written to her; very likely.

Q. (Handing witness paper.) Look at the paper now shown you and state if you recognize that.

A. (After examining.) I recognize that as my writing very plainly. That letter is one I wrote to Mrs. Patten.

108 Q. Do you remember where Mrs. Patten was at the time you wrote that letter to her?

A. I think she was up at the White Sulphur Springs; somewhere near there.

Mr. GLOVER: Warrenton?

The WITNESS: Yes, sir; Warrenton, I think.

Mr. DAVIS: The paper just identified by the witness is offered in evidence by counsel for the complainants and is marked "Complainants Exhibit No. 3" and is as follows:

Mr. GLOVER: And is objected to by counsel for the defendants on the same ground that Nos. 1 and 2 have been objected to, and also on the ground that it is no evidence on the question of satisfaction, being subsequent to the date of the will, is hearsay evidence, and is a breach of the well-recognized rule that an attorney cannot testify to communications, either oral or written, between him and his client.

The letter referred to is as follows:

"C. J. Hillyer. J. H. Ralston.

Hillyer & Ralston, attorneys-at-law, 1326 F street N. W.

WASHINGTON, D. C., *Sept. 8th*, 1885.

MY DEAR MRS. PATTEN: On thinking further of the matter I have concluded not to write to Mr. Deal until I have seen

109 you again. My reason is that I do not think it prudent or best to take any steps in a court proceeding until a full settlement with the girls—at least the three older ones—has been arranged and agreed upon. In the absence of vouchers for your expenditures on behalf of the children the court will require affidavits and proofs upon this point, and you will at once appreciate the difficulty of finding such proofs as will be satisfactory. If an agreement is made and put in proper form, this, as to those of the girls who are of legal age, will be a sufficient basis for making a binding decree which will be valid without further proofs.

I think you had better come down before long and with me make the necessary calculation and determine what you think is justly coming to each of the girls; then talk the matter over with them, and when it is agreed upon have the proper receipts prepared and payments made. We can then see about having the necessary court orders made in Nevada.

This is the course which, on reflection, commends itself to my judgment. If it seems to you the proper course, I shall be glad to see you and attend to it at any time convenient to you.

As I am going to Woodmont for a few days the latter part of this week, perhaps you had better telegraph to Mrs. Hillyer before com-

ing down on this business alone, and she can tell you if I am out of town.

110 Very truly yours,

(Signed) C. J. HILLYER."

Q. Did or not Mrs. Patten act upon the suggestions contained in that letter and come to Washington?

A. Yes; she did, as I have already stated.

Q. And did or did not you and she go into a calculation to ascertain the amount to which you refer?

Mr. GLOVER: Same objection.

A. Yes; we did.

Q. (Handing witness a paper.) Look at the paper now shown you and state what that is.

A. (After examining.) It is a letter from me to Mrs. Patten.

Mr. DAVIS: The paper just identified by the witness is offered in evidence by counsel for the complainants, is marked "Complainants' Exhibit No. 4," and is as follows:

Mr. GLOVER: Before the introduction of which counsel for the defendants desires to enter the same objection to the introduction of this paper as to Nos. 1, 2, and 3.

The letter referred to is as follows:

"Mrs. Patten.

DEAR MADAM: Having at your request looked carefully

111 over the papers and accounts connected with your guardianship for your children, and taking into consideration all the facts, I think if you pay to each of the girls the sum of $101,600 full justice will be done between you.

This, of course, is not an accurate balance, for there are no data to make it accurate, but I believe it is fair and even liberal.

Yours truly,

(Signed) C. J. HILLYER."

Q. In the letter which has just been offered in evidence you state that after having looked over Mrs. Patten's papers and accounts and taking into consideration all the facts you thought that if she would pay to each of the girls the sum of $101,600 "full justice would be done," &c. What, if any, action was taken by Mrs. Patten thereafter?

A. Well, as I stated before, upon that she, after talking it over, agreed that that amount was right; that she had talked it over with the girls and they all agreed that that was right. I advised her, in talking with the girls, to explain to them fully, as fully as she had to me, everything about the property which she owned and with regard to all the other facts which might have an influence upon the question, which she said she did, and they agreed to it and then the paper was drawn and given to her to get the signatures of the girls, which I understood she did.

112 Q. Who drew the paper? I believe you said you did.
A. I did.
Q. (Handing witness a paper.) Look at the paper now shown you and state if you recognize that.
A. (After examining.) That is in my handwriting.
Q. What is that paper?
A. This is the agreement which I drew up to be signed by each of the girls.

Mr. DAVIS: The same is here offered in evidence by counsel for the complainants, is marked "Complainants' Exhibit No. 5," and is as follows:
Mr. GLOVER: Before the introduction of which counsel for the defendants objects to its introduction on the same grounds as made to Nos. 1, 2, 3, and 4.

The paper referred to is as follows:

"Whereas our mother, Anastasia Patten, as guardian for us received in 1873, '4, '5 certain amounts of money, being our portion by inheritance of the estate of our deceased father; and whereas no special separate investments of the money so received have been made by our said guardian, but the same has been by her kept and safely invested in connection with moneys belonging to her in her own right derived from the same estate; and whereas our said guardian has up to the present date had entire charge of our maintenance and education and has, during the past thirteen years, incurred a large amount of family expenses for our benefit, of
113 which expenses no account has been kept by her;
And whereas we and our said guardian are now desirous of settling the account between us in a just and equitable manner without attempting to secure technical accuracy in such settlement;
And whereas our said mother as guardian has submitted to us for inspection all accounts and papers in her possession touching or relating to the receipts or disbursements entering into such accounting, and we have personally general knowledge concerning the family expenses during the said period;
And whereas from such examination and knowledge we believe that by a payment to each of us by our said guardian of the sum of $101,600.00 an equitable settlement will be made and full justice done to each of us:
Now, therefore, each of us for herself agrees to accept the sum of $101,600.00 in full and complete settlement of all accounts, claims, and demands between us and each of us and our said mother and guardian and in full satisfaction of all claims and demands of whatever character arising out of or connected with the administration of said estate or the said relation of guardian and ward, and each of us for herself authorizes and requests that upon presentation of this agreement and a receipt for the above amount the court having jurisdiction thereof will, without any further investigation of ac-

counts so far as they concern either of us, pass the final
114 accounts of our mother as administratrix and guardian, and by proper decree discharge those liable as bondsmen for her action in either capacity.

(Signed) MARY ELLEN PATTEN.
" KATHERINE AUGUSTA PATTEN.
" JOSEPHINE ANTOINETTE PATTEN.
" EDITH PATTEN."

Q. I understood you to say that this paper was drawn by you in duplicate?

A. Yes, sir; that is my recollection.

Q. (Handing witness a paper.) Look at the paper now shown you and state what it is.

A. (After examining.) That is another copy of the same paper.

Q. Both of these papers are in your handwriting?

A. Yes, sir.

Q. In whose handwriting, if you know, are the marks in pencil at the foot?

A. That I do not know, nor do I know in whose handwriting these names are.

Q. And the endorsement, " Wm. M. Stewart." Do you know in whose handwriting that is?

A. I expect that is Stewart's writing; but I would not like to say positively.

115 Q. It is not yours?

A. No, sir.

Mr. DAVIS: Counsel for the complainants here offers in evidence the paper just identified by the witness, and the same is marked " Complainants' Exhibit No 6."

Mr. GLOVER: Same objection as to 1, 2, 3, 4, and 5. I also object to the pencil marks as not being proven as having been executed by anybody or any pretence that they are evidence in the case so far.

Mr. DAVIS: Counsel for the complainants disclaims offering so much of the paper as in pencil marks as having manifestly been made after its execution, and also disclaims offering in evidence the endorsement of William M. Stewart.

Q. Do you know in whose handwriting the figures " $101,600 " are in this Exhibit No. 5?

A. (After examining.) No; I do not. I hardly think those figures are in mine.

Q. Look at the same figures in Exhibit No. 6 and state in whose handwriting they are.

A. (After examining.) Those figures are in mine.

Q. Are you now able to state from memory whether or not the Exhibit No. 5 was first prepared without the insertion of the figures, and that a blank was left for their insertion when ascertained, or how that was?

A. I could not say anything further than the appearance of the paper shows. Evidently that——

116 Mr. GLOVER: We do not care about that, Judge.

The WITNESS: I do not know anything about it except what can be inferred from the paper.

Q. Do you or not know whether after these papers were drawn and executed under the circumstances you have related Mrs. Patten finally settled her accounts as guardian in Nevada?

Mr. GLOVER: Objected to, as that is a matter of record evidence, and the best evidence should be produced. This is secondary.

A. I do not.

Q. After the papers Exhibits Nos. 5 and 6 were prepared by you and passed over to Mrs. Patten under the circumstances you have related, and after you were told by her, as you say, that they had been executed, what, if any, further relation had you to the business?

A. None whatever. I was not consulted by Mrs. Patten after that, I think, at all.

Q. Have you any knowledge of any subsequent dealings by Mrs. Patten with her daughters after the execution of these papers or of any payments she may or may not have made in pursuance of their terms?

A. I have not. I think Mrs. Patten never consulted me after that about her business affairs at all.

117 Cross-examination.

By Mr. GLOVER:

Q. How long have you practised law, Judge Hillyer?

A. Well, I commenced the practice of the law in 1852.

Q. Been practicing ever since?

A. Well, I have not been doing much the last few years. I practiced all the while up to five or six years ago, giving my entire attention to the business. Since then I have not.

Q. You are familiar with the rule about the secrecy attached to communications between client and attorney?

A. Well, I think I know it pretty well.

Q. Don't you think your testimony today a breach of it?

A. I am very sure it is not.

Q. After you drew these papers were your relations with the Patten family interrupted?

A. Yes; our relations were broken off; our pleasant relations were broken off, I think it was, in the fall of 1885, and were not renewed at all as long as Mrs. Patten lived.

Q. Have they since been renewed with the remaining members of the family?

A. No.

Q. Do you speak to the young ladies when you meet?

A. I should always. I have never had an opportunity to

118 either do it or not do it as I know of. I should have no hesitation in doing it.

Q. When did they cease to speak to you, if they did cease?

A. I do not know that they ever have. I am not sure.

Q. Do you not know that neither Mrs. Patten nor the young ladies had any social or personal relations with you or any members of your family from about the time, in 1885?

A. Well, I know this, if you want to get at the fact: I wrote a letter to Mrs. Patten telling her I would have nothing further to do with her in a social way. That is the whole of it, and except that I know nothing about it. I do not know whether the girls refused to speak to me or I refused to speak to them. I do not remember any occasion for it.

Q. Having your letter in mind, have you any doubt now that your personal relations with all the members of the family were terminated at that time?

A. They certainly were. I have said so.

Q. You live just opposite Mrs. Patten's house, do you not?

A. I wish to state in explanation of that that while all communication between us had ceased and all pleasant relations had ceased, I do not remember upon my part anything nor do I know that they did to carry it far enough not to speak if we met in public or on the street.

Q. Do you mean to say that you would write to a lady a letter of that kind and then speak to her afterwards on the
119 street?

A. Certainly.

Q. What did you say in your letter to her, and what was the occasion of writing it?

A. I do not think that is any of your business. If you want to bring it out there is nothing on my part that I am ashamed to tell at all. It is a private matter of this family and I should suppose you would not want it.

Mr. GLOVER: There is nothing on my part that I am ashamed of.

The WITNESS: I will tell you. Mrs. Patten had employed Fleming to build the house at my advice. I advised her to employ him and pay him on a commission, and when the house got pretty near completion she had a difficulty with Fleming about it, and she came to me in regard to it. She construed the agreement one way and Fleming another, and she came to ask my opinion about it, looking upon me as her friend in the matter, and I gave the opinion that Mr. Flemming was correct and that she was wrong and that she ought to accept his construction of the agreement, and that made her angry, and she said some things, and some of the girls did, that offended me, and I therefore wrote the letter I have mentioned. It was not an offensive letter in any way, but simply stating my reasons for feeling that so long as they talked in the way they did I did not care to have any further pleasant relations with them.

120 Q. Now, what did she say and what did the girls say? I want to get at what the girls said.

A. I do not remember, except in a general way, their saying that I was standing by Fleming as against them instead of standing by them as against Flemming. I conceived that there was a little intimation in what they said (perhaps there was a pretty broad one) that I was standing unfairly by Flemming in the matter.

Q. What had you to do with Flemming that they should charge upon you any difficulty they had with Flemming?

Mr. DAVIS: Counsel for the complainants here desires to state that up to this point he has permitted this cross-examination to proceed without interruption in the hope that any objection might become unnecessary, but that he now here objects to this line of inquiry as calling for matter irrelevant and immaterial and gives notice that if it is pursued he will move to strike out all the testimony elicited by such line of inquiry.

A. Well, I advised her to employ Flemming, who had built a good many houses for me. I do not think there was any reason. It was a most unreasonable thing.

Q. Did they claim that they had lost money by reason of Flemming's behavior?

A. Yes; they claimed that Flemming had made the house cost more than it ought to—that is to say, Mrs. Patten held that
121 Flemming, because he had told her that he thought the house could be built for $70,000, that, although he was building it upon a commission entirely, she thought he ought not to have her pay more than that for the house, no matter if it cost him more or not.

Q. You do not mean to say, do you, Judge Hillyer, that on that basis and that alone they quarreled with you or fell out with you, do you?

A. I know of nothing else, and I know it was on that and that alone, because after this letter was written Mrs. Patten came over to the house immediately (if you want to know all about it I have no objection to telling you) and disclaimed any intention to reflect upon me in that way, and I told her, "All right, then; let it go." She came evidently feeling very badly about it. That went all well enough, and I should have passed it by then on that explanation, but we heard within a few days of some things that some of the girls had said that looked as if they had not withdrawn the criticisms, and then we did not like it and we just stopped all intercourse.

Q. What were those criticisms that you heard they had made on you?

A. No other except what I have said; criticisms about Flemming; nothing else.

Q. Did they not say that Flemming had defrauded them and that you were in some way a party to it?

A. Yes; that I had not stood up by them and I was in some way to blame about it.

122 Q. Mrs. Hillyer and Mrs. Patten ceased to be friends at the same time, did they not?

A. Yes, sir.

Q. Ceased to speak?

A. If you mean by ceasing to speak that Mrs. Hillyer would not have spoken to Mrs. Patten or Mrs. Patten to Mrs. Hillyer if they met in a public place, I presume they would, but they ceased to have pleasant relations.

Q. Do you not know as a matter of fact that since that time you have repeatedly met different members of the Patten family and you have not spoken to each other?

A. I never have; I never have met one of them whom I have recognized under circumstances that I would naturally speak that I have not spoken because I always thought I should.

Q. Do they speak to you?

A. I do not know that they have had an opportunity; I do not remember any such occasion.

Q. Then you do not remember ever meeting and speaking to them after that?

A. I do not, when I recognized them.

Q. The families were quite intimate before that?

A. Yes; we used to see each other a good deal.

Q. You had a daughter——

The WITNESS: Now——

Mr. GLOVER: Pardon me; I only want to know if the young ladies spoke or not.

A. I have told you that there was a general break-up among the whole family.

123

Q. You were a friend of Edmund Patten in his early days?

A. I was his attorney for a good many years; in all the law business he ever had.

Q. A friend also?

A. Yes, sir; we belonged to the same political party and worked together a good deal.

Q. They had a lawsuit with Flemming afterwards over the building of the house, did they not?

A. Yes; I heard they did.

Q. Now, Exhibits 1, 2, 3, 4, and 5—these papers—in whose custody have they been since 1885?

A. I do not know. I have told you all I know about those papers. I do not know in whose custody they were; not in mine.

Q. They have not, then, been in your custody?

A. No, sir.

Q. And you do not know in whose custody they have been, do you?

A. I do not.

Q. Who advised the young ladies professionally at this time that you were advising Mrs. Patten?

A. I do not know.

Q. Do you know whether they had any legal adviser?

A. I do not.

Q. Who is John P. Flannery?

124 Mr. DAVIS: Objected to as irrelevant and immaterial and as not responsive to the direct examination.

A. I do not know. I think Flannery was Mrs. Patten's maiden name, and I presume he is a relative of hers.
Q. You do not know just what relation he is?
A. No.
Q. Do you know who Mrs. Ellen Hamlin is?

Mr. DAVIS: Same objection.

A. No.

C. J. HILLYER.

Subscribed and sworn to before me this 9th day of May, 1891.
ALEXANDER H. GALT, *Examiner.*

Thereupon, at 3.15 p. m., owing to the absence of any further witnesses, adjourned until Thursday, January 29th, 1891, at 2 o'clock p. m., at the same place.

THURSDAY, *January 29th,* 1891—2 o'clock p. m.

Met pursuant to adjournment.
Present: As before.

Whereupon C. C. GLOVER, a witness produced on the part and behalf of the complainants, of lawful age, being first duly sworn, deposes and says:

By Mr. DAVIS:

125 Q. Please state your name, age, residence, and occupation.
A. Charles C. Glover; resident of the city of Washington, District of Columbia; banker, member of the firm of Riggs & Co. for about sixteen years.
Q. Their place of business during all that time has been in the city of Washington, D. C.?
A. Yes, sir; part of the time with a branch office in New York, though.
Q. Did you know Mrs. Anastasia Patten, late of the District of Columbia?
A. I did.
Q. For how long a time before her death?
A. Some years, I cannot say how many, but I was introduced to her upon her first coming to Washington to live.
Q. Do you know where she kept her bank account and transacted her banking business in the city of Washington?

Mr. GLOVER: We object to any parole testimony from the witness touching any of the issues in the case on the ground that the same is not admissible.

A. Her account was kept with the firm of Riggs & Co.
Q. As bankers, have or have not Riggs & Co. had occasion to deal

in and have they dealt in United States bonds and similar securities?

A. Yes, sir.

Q. Are you familiar with the issue of United States Government bonds known as the four per cents of 1907?

126 A. I am.

Q. Do you know what was their market value in the month of February, 1887?

Mr. GLOVER: I object to that because it is too general and should be confined to a certain date.

The WITNESS: The fluctuations were very slight during that month, Mr. Glover. The bonds ranged from twenty-eight to twenty-nine.

Q. What do you mean by that?

A. Twenty-eight to twenty-nine per cent. premium. They were about twenty-eight and a half during almost the entire month.

Q. Then a bond for $100 of that issue during the month of February, 1887, was worth what?

A. About $128.50.

Q. Do you remember any transaction had by you for or with Mrs. Anastasia Patten in respect of bonds of that issue during the month of February, 1887?

Mr. GLOVER: I object to that as irrelevant and because the declarations of Mrs. Patten cannot be proven by parole testimony to effect any issue in this cause.

A. I remember very distinctly Mrs. Patten consulting me about the price of bonds during or about that time.

Q. What was the interview between her and you as nearly as you can recall it?

A. She wanted to ascertain about what amount of bonds with
127 the premium added would make up a sum somewhere in the neighborhood of $100,000—something over $100,000.

Q. Did she or not state her purpose at the time?

Mr. GLOVER: Objected to, as all of this testimony is objected to on the ground that the declarations of Mrs. Patten made to the witness cannot affect the question whether Mrs. Glover was paid or not unless Mrs. Glover was present at the interview, and cannot affect any other issue in the cause.

A. She did. Her purpose was to transfer these bonds to one of her daughters about to be married.

Q. Did you or not make the desired calculation?

A. I did, and I furnished her the necessary figures. My recollection is that it was somewhere in the neighborhood of $79,000, which made up about the amount she wished to use. She almost always carried papers with her. I gave her the memorandum.

Q. You mean the memorandum upon which the calculation was made?

A. Yes, sir; giving her the figures.

Q. Do you of your own knowledge know whether in fact she made the transfer spoken of by her?

A. Yes, from her stating the fact to me afterwards that she had.

Mr. GLOVER: Objected to on the same grounds as before.

128 Q. What amount did she say she had transferred, if you remember?

A. No; I cannot say that I remember distinctly that, but it was an amount something over $100,000. My recollection is that Mrs. Patten told me afterwards that she put these bonds under her daughter's plate, I think, and she went off and forgot them or overlooked them. That is, I think, the statement she made to me.

Q. That her daughter, you mean, went off and forgot them?

A. Yes; they were taken to the house, and I think it was intended to represent how little her daughter cared about bonds or thought about money, and my recollection is Mrs. Patten told me her daughter had forgotten the bonds or gone off and left them.

Q. At what time during the year is interest payable upon bonds of that issue?

A. Quarterly.

Q. If bonds of that issue were transferred in February, 1887, when was the next instalment of interest thereon due?

A. Due the first of April.

Q. And to what time would it relate?

A. The quarterly periods of interest would be January and April. It would be the first of April.

Q. That is to say, that on the first of April interest would be payable as from the 1st of January?

A. Yes; that is the idea exactly.

129 Cross-examination.

By Mr. GLOVER:

Q. You are not positive, Mr. Glover, about that plate incident, are you?

A. My recollection is she stated in substance what I have testified to. No; I could not state it positively, but that is my recollection. She made a statement of that kind afterwards to indicate how little her daughter thought of the very considerable amount that had been placed at her disposal.

Q. Well, I want to know if you mean to state it positively or if you have an indefinite recollection about it on which you will not say you can be mistaken.

A. My recollection is pretty positive on that score, Mr. Glover.

CHARLES C. GLOVER.

Subscribed and sworn to before me this 28th day of May, 1891.

ALEXANDER H. GALT, *Examiner.*

130 BENJAMIN P. SNYDER, a witness of lawful age, produced on the part and behalf of the complainants, being first duly sworn, deposes and says:

By Mr. DAVIS:

Q. Please state your name, residence, and occupation.

A. Benjamin P. Snyder; president of the National Safe Deposit Co.; residence, District of Columbia.

Q. How long have you been president of the National Safe Deposit Co.?

A. Since about 1882 or 1883, I think.

Q. Have you been in such continuously?

A. Continuously.

Q. Do you know John E. Beall, of this city?

A. I do.

Q. How long have you known him?

A. Possibly 15 years or more.

Q. Did you know Mrs. Anastasia Patten, late of the District of Columbia?

Mr. GLOVER: I object to the introduction of any evidence of the declarations of Mrs. Patten as not being admissible under the issues in this cause.

A. I did.

Q. How long a time did you know her before her death?

A. Several years.

Q. Did you in October, 1887, have any relation to a transaction between Mrs. Patten and Mr. John E. Beall?

131 A. Yes.

Q. What was that transaction?

A. It was the acceptance of a trust.

Q. What was the nature of the trust; was it expressed in writing or verbally?

A. Expressed in the written instrument.

Q. Have you that instrument with you?

A. I have.

Q. (After witness had handed paper.) In whose handwriting is this instrument?

A. Mr. Ross Perry's.

Q. Will you be good enough to state as briefly as you can the circumstances leading up to this paper so far as you knew them from Mrs. Patten?

A. In the first place, Mr. John Beall applied to me to accept a trust, stating that he expected to make a loan from Mrs. Patten. I assented, and shortly after he came in with Mrs. Patten and had with him some memorandum of the terms under which he wished me to act.

Mr. GLOVER (interrupting): In writing?

The WITNESS: Yes, sir; in writing. I looked over the memorandum and suggested to him that I would prefer to consult Mr. Perry in the matter first and have him put the terms of the trust in defi-

nite shape, and if he would agree to that I would accept and act as trustee, and Mrs. Patten approved of my suggestion and Beall
132 assented to it, and I then had a conversation with Mr. Perry and, as I think, submitted to him Beall's memorandum and made such explanation as occurred to me to him, and out of that grew this trust, this trust deed.

Q. Is this the original paper itself that you have handed me?

A. That is the original trust as drawn by Mr. Perry.

Q. And is it not the one under which you accepted the trust and thereafter acted?

A. That is the document, sir.

Q. (Handing witness the paper referred to.) Whose signature is that to the body of the trust?

A. That is John Beall's.

Q. And whose signature is this to the acknowledgment?

A. Bagg's.

Q. Do you know Bagg?

A. Very well.

Q. Is that his signature?

A. Yes, sir.

Q. Do you know whose signatures those are at the foot of the memorandum above the acknowledgment?

A. Mary Ellen Patten, Josephine Antoinette Patten, Edith Agnes Patten, and Helen Patten.

Q. Do you remember when that trust was delivered to you?

A. I could not fix the exact date; it was only a few days subsequent to the date of the instrument.

133 Q. Do you object to my filing this paper as an exhibit in this cause, or do you prefer to retain it?

A. I have no objection to your doing so.

Mr. DAVIS: Counsel for complainants here offers in evidence the instrument produced by the witness, and the same is marked "Complainants' Exhibit No. 7."

Q. Now, Mr. Snyder, what, if any, statements did Mrs. Patten make to you as to the person or persons for whom the investment was made that is represented by that trust?

Mr. GLOVER: Same objection that I originally made to all evidence of Mrs. Patten's declarations.

A. After John Beall left the room she, I think, asked me if I did not consider this a good loan. I told her yes, and then she said to me that it was some money she wanted to give those four girls for pin-money to give them a sense of independence, that they might have some income that they could do as they pleased with without any supervision from herself, and, further, that she had already provided for the other daughter, the married daughter, quite liberally, and she thought she ought to give these girls something. That is about the substance of it.

Q. Was that before or after the execution of the trust?

A. That was before the execution of this trust; it was pending the completion of the papers and after my acceptance of the trust.

134 Q. In connection with her statements in the direction you have already indicated what, if anything, was said as to the manner of paying the interest?

A. She said she would have the interest paid. She wanted the interest paid at Riggs & Co.'s and pass to the individual credit of the beneficiaries and not to go into her account.

Q. And how about the time of payment; when was the interest to be paid; how often a year?

A. I do not recollect, Mr. Davis. I presume the trust will show that. My impression is it was quarterly.

Q. Yes; it is so provided in the trust. Do you or not remember whether or not Mrs. Patten made any statement in explanation of her desire to have it paid quarterly instead of at other intervals?

A. I have no recollection.

Q. Now, in whose custody has this deed of trust been since you first received it?

A. Mine—that is, I may say it has been on deposit in the safe deposit Co., subject to my order, under my sole control, and in that sense I may say it has been in my possession.

Cross-examination.

By Mr. GLOVER:

135 Q. Do you remember when the safe-deposit receipt for the stock which was put into your hands and which you deposited with the safe-deposit Co. was dated?

A. I do not; I could only tell by reference to the certificate itself, which is on file.

Q. You have that now?

A. I have not that with me. I presume it was within a few days after the 15th of Oct., 1887.

Q. Was it not October 31, 1887?

A. Possibly; I could not tell.

Q. There was an interval?

A. Oh, yes; I should judge so.

Q. Did you deposit the stock with the safe-deposit Co. as soon as you received it?

A. I could not answer that question positively, Mr. Glover, but in all probability I did; that would be my habit.

Q. Was the transaction in abeyance between the date of the instrument, which is October 15th, 1887, and the date when the stock was delivered to you?

A. If my recollection is correct, the stock and notes were delivered to me the day that Beall brought in that imperfect instrument, the one under which I declined to act—that is, declined unless it was modified and put into such shape as would be satisfactory to myself.

Q. Your impression is, then, that you had the custody of the stock from the first broaching of the transaction?

A. Yes; from the day they first came to see me. What
136 date that was I could not tell without reference to the original paper, and where that is I do not know.

Q. Do you know when Mrs. Patten's check was passed to Beall for the amount he wanted to borrow?

A. The day they came in with those papers. I am almost positive of that. I think she gave him the check and the papers were turned over to me.

Q. What relation has C. C. Glover to the safe-deposit Co., if any?

A. He is vice-president and on the board of directors.

Q. Was he so at this time?

A. Yes.

Q. This entry, "We hereby agree, in consideration of the execution and delivery of the above deed of trust, to grant to John E. Beall the extension or renewal therein provided for upon the contingencies therein provided for and not otherwise," purporting to have been signed by Mary Ellen Patten, Josephine Antoinette Patten, Edith Agnes Patten, and Helen Patten; about that I wish to ask you do you know those signatures?

A. I think I can identify them.

Q. When were those signatures made?

A. They were made before the instrument was finally put into my hands.

Q. When the formal instrument, upon which you insisted, was executed and delivered to you, it had those signatures attached?

137 A. I could not answer that question.

Q. ~~I think~~ you just said that.

A. Oh, no. I said this——

Q. (Interrupting.) When this deed of trust which you had agreed should be filed was finally handed into your custody as a complete instrument, did it have these signatures then attached?

A. Yes, sir.

Q. Were they then in pencil or ink?

A. Just as you see them. Those pencil marks are Mr. Perry's.

Q. But they had been signed in ink when finally delivered to you?

A. Yes. When that instrument was handed to me, I turned it over to them for those signatures or to their representatives, whoever took it. Probably Beall took it. I do not know.

Q. Who delivered it to you when it was finally ready?

A. My impression is Mrs. Patten.

Q. And at that time it did not have these signatures upon it?

A. When it was finally delivered to me I think it was delivered by Mrs. Patten, and then it had those signatures.

Q. In ink?

A. In ink.

Q. Are you positive about that?

A. Almost. I am positive about the signatures being
138 ink when finally delivered. Yes; but not as to who handed

me the document finally. My impression is very strong, however, that Mrs. Patten brought me the document.

Q. You did not have the custody of the note?

A. Oh, I had the custody of the notes at that time.

Q. When did they pass out of your custody?

A. Some time after that was delivered to me finally.

Q. Into whose custody did they pass?

A. Mrs. Patten's. She requested me to keep them, but I declined.

Q. You then kept the deed of trust and gave up the notes?

A. Gave her the notes.

Q. You mean she requested you to keep the notes?

A. She asked me to keep the notes.

Q. In order that you might collect the interest?

A. Yes.

Q. And turn it over to Riggs?

A. And to the beneficiaries.

Q. Which you declined?

A. Yes; it was no part of my duty, and I declined.

Q. And you, when you so declined the notes, passed them into her custody?

A. They passed into her custody and she put them into her safe.

Q. How do you know that?

A. I saw her do it.

139 Q. Saw her put them in her safe-deposit box?

A. Yes.

Q. Do you remember the opening of that box when Senator Stewart, Upton, and myself and Beall were present?

Mr. DAVIS: Objected to as not responsive to the direct examination.

A. Yes.

Q. Do you remember anything that transpired that day?

Mr. DAVIS: Same objection.

A. I think something was said about this note, when it was taken out, the principal note, but I am not sure.

Q. Was not this the case: that Mr. Beall said there was a note overdue and proceeded to take it out and you said to him, "No; take nothing out, Mr. Beall. If you want to pay a note, you can pay it and get it out afterwards"?

A. Possibly.

Q. Is not that rather your impression?

A. Possibly. I do not know but that you are right about that, Mr. Glover. If my recollection is correct, it was an examination of the box.

Q. By the parties in interest?

A. Yes.

Q. Was it not a fact that I took there with me a letter from Mrs. Glover authorizing me to act in her stead?

Mr. DAVIS: Same objection.

A. I believe there is such a letter on file with us.

140 Q. Did Beall come there and leave checks with you once or twice or oftener for the interest?

A. I think on two occasions.

Q. What did you do with the checks?

A. I either handed them to Mrs. Patten or endorsed them to her order and handed them to her.

Q. They were made payable to your order?

A. Yes.

Q. Do you know on what bank they were drawn?

A. On Riggs & Co., and I either took them over and deposited them to their credit or I handed them to Mrs. Patten; I cannot answer positively; but I then objected to Beall sending his checks to me and told him I would prefer not to receive them. I did not want to be charged with the responsibility of handling money for that purpose, in which I had no interest.

Q. Were you present when there was a discussion between Mr. Upton, Senator Stewart, and myself touching the bond that was to be given—was Miss Josephine Patten there, I will ask you first?

Mr. DAVIS: Same objection.

A. You mean the day you came and went into my room?

Q. Yes; when the colloquy occurred about notes and interest.

A. I do not remember a discussion of that kind. I know Miss Patten was there at the same time.

141 Q. But you do not recollect a discussion as to whether the young ladies were partners with their mother in the estate of Anastasia Patten—in the assets which appeared to be her property? Were you present during the whole time when the parties were there or did you simply come and go out?

Mr. DAVIS: Same objection.

A. I could not positively state.

Q. Did you hear anything said by Miss Patten about these notes? Did you hear this said by Mr. Stewart: "It seems that you also got some from your mother;" and did you hear Miss Patten say, "Yes; our mother gave us $45,000," or something to that effect?

Mr. DAVIS: Same objection.

A. I do not recollect it.

Q. There was a payment on the notes subsequently, was there not?

A. On the principal notes?

Q. Yes.

A. Yes, sir.

Q. Do you remember the amount?

A. My impression is it was $20,000.

Q. Do you remember the date?

A. I could not state without reference to the paper—the receipt.

Q. Was the payment made to you?

A. No.

142 Q. On that you surrendered certain stock?

A. No; I received an order from the Misses Patten to surrender the stock, saying there had been a partial payment made.

Q. Which you have on file?

A. Yes.

Q. You were under the impression at one time, when the bill of discovery was filed, that Mrs. Glover had made such an order?

A. I was.

Q. Do you remember asking me at the time not to mention the circumstances touching the matter which you had disclosed to me under that impression?

A. I do.

Q. Was there any particular reason why you desired to maintain this secrecy about the $20,000 payment?

A. Simply because I had made a mistake by confusing your wife with the transaction.

Q. No special injunction of secrecy?

A. None; simply a business reason.

Q. General policy?

A. Yes.

Q. You remember that you required me to get an order from Mrs. Glover, indicating that she wanted information, and that order was filed with you?

A. Yes.

143 Q. Did you see any one between the time you sent me for the paper and the time I returned?

A. I did not. I never spoke of that circumstance to any one. You are the first to disclose it.

Q. Do you remember telling me you had verified Mrs. Glover's signature to that order—that is, that it was your first impression that you had verified it?

Mr. DAVIS: Same objection.

A. Verified her signature in what way?

Q. This order to deliver to Beall so much stock. You were at first under the impression that it was signed by all of the children of Mrs. Patten, including Mrs. Glover, were you not?

A. Yes.

Q. And do you remember telling me, when you were under that impression, that you had verified Mrs. Glover's signature?

A. No; I do not.

Q. And did you not explain afterwards, when you said that you had verified all the signatures and hers being one, you had made the statement?

A. I do not recollect, but that is what I should do, Mr. Glover. I should not make the delivery without verifying the signatures.

Q. Do you remember how the $20,000 was paid?

A. It was paid to Riggs & Co.

Q. By whose check?

A. I do not know; I presume John Beall's.

144 Mr. GLOVER: I do not want you to presume.

The WITNESS: I can only answer your question in that way. I went over and verified the payment on account.

Q. Your order was conditioned on the payment, was it not?

A. No; it was absolute; but to satisfy myself that there had been a payment I went over and verified it. I took his word for it until I got across the street.

Q. You did not act on it until you got across the street, did you?

A. I paid the order. I was bound to under the trust.

Q. You did not do it until you had seen the money had been deposited?

A. Yes; I delivered the stock. He could not make his payment until I did.

Q. He had not made his payment, then?

A. No.

Q. Was the note due when the payment was made?

A. I do not know. I would have to refer to the papers to find out.

Q. Was there any discussion in your presence as to the reasons for making a payment prior to the maturity of the note?

A. None. I might say, Mr. Glover, that the first notice I had of there being any question was from your visit to me. The date of that will fix it.

145 Q. That is about the time the bill was filed making you a party, was it not?

A. My impression is it was a day or two before you came in to see me. I was not made a party in the bill.

Q. A copy was served on you, was it not?

A. Yes, sir; you were kind enough to say that you left me out, as you did not want to annoy me.

Q. Do you know, when you stated to me that Mrs. Glover's signature was attached to this order, under your first impression about it, that I stated to you that Mrs. Glover did not know anything about the notes and you said, "Yes; she signed it"?

Mr. DAVIS: Same objection.

A. About the order?

Q. The question I ask is, did not the conversation occur in this way: You stated that $20,000 had been paid upon this note by Mrs. Glover and the others, and did I not then say to you that Mrs. Glover did not know anything about the existence of the note there, and did you not then say, "That cannot be," or words to that effect, "because I have her signature to the order of delivery," and was not that the way in which we finally came to discover the mistake under which you were laboring?

A. Possibly.

Q. Do you know whether the Misses Patten had at the date of this transaction, or between it and the death of Mrs. Patten,

146 which occurred in September, 1888, a box of their own at the safe-deposit Co.?

Mr. DAVIS: Same objection.

A. That question I cannot answer.

Q. Now, Mr. Snyder, I want to fix, if I can, the persons who were present on that day; see if I recollect them. I was there undoubtedly, was I not?

A. Yes, sir.

Q. Do you remember Senator Stewart?

A. Yes.

Q. Remember Mr. Upton, an old grey-headed man?

A. I do not recollect him so clearly.

Q. Mr. Beall was there?

A. John Beall; yes.

Q. And you were there a part of the time at least and you cannot tell whether you were there the whole time or not?

A. I cannot; if I was not there I left a representative of the concern. The only reason for our presence was this: Not to listen to the discussions, because we avoid that as far as we can, but simply to see that nothing is removed from the box. The examinations are permitted to ascertain the contents where the parties are known and responsible, or to search for a will; that is the only thing. We allow nothing removed from the box, and that is the only reason for our presence at the opening of the box.

147 Q. Is it not a fact that the contents of the box were examined at that time?

Mr. DAVIS: Same objection.

A. I presume they were.

Q. Do you not remember that this discussion about the Beall note arose because one of Beall's notes was produced?

A. I recollect something about the notes, but, as I say, I make it a point not to charge my mind with anything that is said under such circumstances.

Q. Do you remember a colloquy between Senator Stewart and myself touching the Beall notes, as to whether they should be shown to me or not?

Mr. DAVIS: Same objection.

A. I do not recollect it.

Q. Do you remember any remark made by Miss Josephine as to what her sister, my wife, had received from Mrs. Patten?

A. I do not.

Q. Do you remember this statement: Beall said, referring to something which had been taken from the box or was exhibited, "These are my interest notes," and he also said, "There is a note in there overdue: I had better take that out and pay it," and did you reply—I should say, then, Stewart said—"Take out nothing;" then Snyder said, "No, Mr. Beall, if you want to pay it you can do so and get the note subsequently;" to which Mr. Beall assented. Does that refresh your recollection at all?

148 Mr. DAVIS: Same objection, and, further, that it is irrelevant and immaterial.

A. I could not answer, Mr. Glover; I recollect some discussion about the interest notes or about the notes, most likely the interest notes. I am not prepared to contradict what you say.

Q. I am trying to see if I can refresh your recollection on it. Did you hear this colloquy in reference to a certain paper which now figures in these proceedings: Said Mr. Stewart, "Mr. Glover, this is our outlet to avoid giving a heavy bond." I said, "How so?" He said, "Why, don't you understand?" Whereupon Mr. Upton said, "Let me tell him. These young ladies are all partners of their mother; she never made an investment that they were not consulted about and assented to. Now, conceding that their interest is only worth $100,000, that is just to set aside $400,000 out of the estate as belonging to them, and that would leave only about $120,000, and you can give a bond for double that." Do you remember anything of that kind?

Mr. DAVIS: Same objection.

A. I do not.

Q. You did not hear Upton say they were part owners of the estate?

A. No; at least I have no recollection of it.

Q. Did you hear Miss Josephine say anything about having been present when certain bonds were given to Mrs. Glover?

149 A. No. The only information I had on that subject was from Mrs. Patten herself at the time the trust deed was made.

Q. You have stated what she said?

A. Yes.

Q. That she had provided liberally for the other daughter?

A. That is the recollection that I have.

Q. Mr. Snyder, by referring to your answer in the discovery proceedings, No. 11462, in this jurisdiction, verified by you on the 23rd day of December, 1889, I find these words: "I also, on the 31st day of October, 1887, received from the defendant Beall and myself deposited with the defendant, the said safe-deposit company, the 386 shares of stock specifically described in the said deed of trust, and received the certificate of deposit, of which a correct copy is appended hereto, marked 'Exhibit B.'" Is this according to your present recollection as to dates?

A. I would not be positive as to the dates, and I would not be positive as to who delivered to me that stock and deed, but my impression is that it came through Beall. He must have given me the stock, of course, because no one else had the stock; but about the deed I am not positive.

Q. What I am trying to do is to find out whether this was a completed transaction on the 15th of October or whether it hung uncompleted until the 31st, when the stock was delivered to you,

150 with the view of fixing the date of payment, the passing of Mrs. Patten's check to Mr. Beall.

A. My recollection is that the first day they came to the bank to consult me about the matter the thing was completed that day.

Q. And the money passed, so far as you know?

A. That is my belief now; but, if I recollect aright, I held the original until this subsequent paper was executed and delivered to me—that is, the perfected paper.

Q. Have you the original paper?

A. No.

Q. Who has it?

A. I do not know. I presume it was delivered to Beall. I presume I delivered it to Beall.

Redirect examination.

By Mr. DAVIS:

Q. I neglected to ask you, Mr. Snyder, whether you would recognize the original notes secured by that trust if you should see them.

A. I think I could.

Q. (Handing witness papers.) Look at the papers now shown you and state what they are.

A. (After examining them.) I should think those were the original notes. Some of them have my marks on them.

Mr. DAVIS: The same are here offered in evidence and marked respectively Complainants' Exhibits from 8 to 20.

151 Recross-examination.

By Mr. GLOVER:

Q. Are the endorsements of payments on the back of these in your handwriting—on the back of the main note for $45,000?

A. No; there is no endorsement on the principal note in my handwriting. January 9th, 1889, that was paid.

Q. These two notes, Mr. Snyder, dated October 15th, 1887, identified by you, one of them runs for nine months, payable nine months after date, for $675, and the other runs three months after date, for the same amount, dated the same—that is, Oct. 15th, 1887—have written on the face "Paid by check Jan. 5th, 1888," as to the three months' note, and "Paid by check of Jan. 3rd, 1888, No. 313, on Riggs & Co., endorsed to the order of Anastasia Patten," which is the endorsement on the nine months' note. These words on the face are in your handwriting, are they not?

A. There are.

Q. And the check referred to was John E. Beall's check?

A. John E. Beall's check.

Q. And what did you do with the check when you got it?

A. I either delivered it to Mrs. Patten or deposited it with Riggs & Co. I cannot say which.

Q. According to this nine months' note when the check of Beall reached you it was already endorsed by Mrs. Patten, was it not?

152 A. Oh, no.

Q. Then the entry does not mean that. What does it mean?

A. It means paid by check, so and so; paid to Mrs. Patten by me.

Q. You endorsed it to Mrs. Patten; it was made payable to your order?

A. Yes, sir.

BENJAMIN P. SNYDER.

Subscribed and sworn to before me this 3rd day of June, A. D. 1891.

ALEXANDER H. GALT, *Examiner.*

At this point, at the request of Mr. Glover, counsel for the defendants, adjourned until Monday next, Feb. 2nd, 1891, at 2 o'clock p. m.

153 MONDAY, *Feb. 2nd*, 1891.

Met pursuant to adjournment.

Whereupon, owing to the absence of Mr. Glover, counsel for the defendant-, from the city, adjourned to meet on notice.

MONDAY, *April 6th*, 1891.

Met pursuant to notice.

Whereupon, owing to the absence of Mr. Glover, counsel for the defendant-, from the city, adjourned to meet on notice.

154 APRIL 21ST, 1891.

Met pursuant to notice.

Present as before.

Whereupon RICHARD ROSS PERRY, a witness produced on the part and behalf of the complainants, being first duly sworn, deposes and says:

By Mr. DAVIS:

Q. Mr. Perry, will you please state your full name, age, residence, and occupation?

A. My full name is Richard Ross Perry; my age is a little over forty-five years—forty-five my last birthday—and my occupation is that of an attorney-at-law.

Q. Did you, in her lifetime, know Mrs. Anastasia Patten?

A. I never consciously saw her; I may have seen her, but I did not know her personally.

Q. Do you know the parties to this cause, Mary Ellen Patten, Josephine Antoinette Patten, Edith Agnes Patten, and Helen Patten?

A. I have never seen all of them to know them; I do not know them by sight.

Q. Do you know Benjamin P. Snyder?

A. Very well. I have known him for twenty years or more.

Q. What is his occupation?

A. He is president of the National Safe Deposit Company of Washington, and also president of the National Savings
155 Bank of the District of Columbia.

Q. Do you know John E. Beall?

A. Very slightly; I probably have never seen Mr. Beall over four times in my life, or five times, possibly.

Q. In the month of October, 1887, were you a party to any transaction between Mr. Beall and Benjamin P. Snyder in which the Misses Patten were interested?

A. I have no recollection now as to the time, but I do recall the preparation of a certain paper by me at the request of Mr. Snyder.

Q. Look at the paper now shown you (handing witness Complainants' Exhibit No. 7) and state if you recognize it.

A. (After examining paper.) Yes, sir; this is the paper, and the formal parts of it, by which I mean the whole of it, save the signatures thereto, and in one case I see the word descriptive of the office of the signatory, to wit, notary public, attached to the name of George W. Bagg, is all in my handwriting.

Q. Will you be good enough to state the circumstances under which you prepared that paper?

A. The matter is now fresher in my mind by reason of there having been litigation in regard to it than it would have been if my attention had been called to it now for the first time, but still there was quite a time intervening between the preparation of the paper and the development of any litigation in regard to it, so that,
156 even with my memory refreshed, I do not speak of it as distinctly as I would of a transaction that occurred recently. My best recollection about it is this: I see that the instrument bears date of the 15th of October, 1887, and it purports to have been executed on the 24th day of October, 1887. My recollection is that about that time—and, of course, I am governed as to the exact time by that stated in the instrument—Mr. Snyder told——

Mr. GLOVER: I object to any evidence as to what Snyder told you or what Beall told you about this transaction.

The WITNESS: It may save time if I say that no one save Mr. Snyder said anything to me about it whatever. I never saw anybody in connection with it save Mr. Snyder. My recollection now is that Mr. Snyder told me that he wanted me to prepare a deed of trust of the nature of this paper, and I prepared it upon his instructions, which, as I recollect now, were verbal. This paper, to the best of my recollection and in my judgment, expressed in legal form the instructions which he gave me. On page 11, beneath the certificate of the notary, there are five lines in my handwriting, and I observe in my handwriting in pencil there were written the names of Mary Ellen Patten, Josephine Antoinette Patten, Edith Agnes Patten, and Helen Patten. My object in writing those was to indicate where the respective signatures should be made, and
157 the only reason that I did so, although I do it quite usually, I am apt to do it, but the reason I did so in this particular

case was that there were just two lines left at the bottom of the page, and I thought it would be best to have the signatures come in that order—that is, that they would all be on the same page immediately under the note. From the time that I prepared this until the bill was filed in a certain cause, the name of which you can probably give me—I do not recall the name of it, but it was filed some time in January.

Mr. GLOVER: 11742.

The WITNESS: It was filed, I think, in January of 1889 or 1890.

Mr. GLOVER: 1889.

The WITNESS: I say from the time I handed Mr. Snyder this paper, which was since I prepared it, until the filing of that bill to which I refer I do not think I heard anything whatever in regard to it or received any further instructions.

Q. Were you present at the execution of this paper, Exhibit No. 7?

A. I was not.

Q. After you prepared it what did you do with it?

A. I took it up to the safe-deposit Co. and gave it to Mr. Snyder.

Q. And after that what, if anything, did you have to do
158 with the custody of the paper?

A. Nothing whatever—that is, I assume you mean after the litigation began.

Mr. DAVIS: Yes. Do you know anything as to the signatures of the Misses Patten at the foot of the paper?

A. Nothing whatever; I have never seen anything that purported to be the signatures of these ladies save on one occasion.

Q. And after your delivery of it to Mr. Snyder when did you first see it?

A. It was after the beginning of the litigation.

Q. And in whose custody did you see it?

A. I saw it in his custody and for awhile it was in my custody; I had to refer to it in preparing some answers and other papers, and it was in my safe for awhile, but I did not see it at all from the time that I gave it to him in Oct. until after the beginning of the litigation—until after, I will say, March, 1889.

Q. You were the counsel of Mr. Snyder in that litigation to which you refer?

A. Yes, sir; I have been his counsel for, I think, about 20 years.

Q. And you had the papers in your possession in connection with that litigation?

A. Yes, sir.

Q. And that is the first time it came into your possession
159 or under your notice after its execution?

A. To the best of my recollection; yes.

Q. The paper Ex. No. 7 is in form a deed of trust to secure certain notes. Look at the papers now shown you and state, if you please, if you recognize them (handing witness papers).

A. (After examining.) The first paper now shown me, which is a note, purports to be a note for $45,000, is entirely in my handwriting, except the signatures and the address of the maker and the endorse-

ments thereon. The other papers, being interest notes, are all in my handwriting, save the words at the conclusion, "without interest, this note being a note given to pay interest on a note for $45,000," and the signature and endorsement of the maker and the endorsement, where any, upon the back are in my handwriting and were prepared at the same time I prepared the deed of trust that was given by me to Mr. Snyder at the same time, and what I testified to as to the deed of trust is applicable to the principal and interest notes which you have just handed me.

Mr. DAVIS: The papers referred to by the witness are here marked respectively Ex's R. R. P. Nos. 1 to 13, inclusive, and the same are here offered in evidence by the counsel for the complainants.

Mr. GLOVER: And objected to as not tending to show payment.

160 Q. As I understand you, the deed of trust and these notes in your handwriting were prepared by you in accordance with instructions received from Mr. Snyder?

A. That is correct.

Q. In the preparation of this deed of trust and the notes did you or not receive any instructions or information from Mr. Beal?

A. I did not.

Q. Or from the Misses Patten?

A. I did not; I never received any instructions from nor interchanged a word with either of the Misses Patten or any one of the Misses Patten in my life.

Q. And how about Mrs. Patten, the mother?

A. And the same is true about the mother. As I say, I never consciously saw her during her life. Mr. Snyder was the only one I ever knew in connection with it or received any instruction in regard to it at all.

Q. And as to the purpose of any of the parties in executing the deed of trust or these notes, you knew nothing except what you learned from Mr. Snyder?

A. I knew nothing except what I learned from Mr. Snyder, if I learned anything, further than the instructions as to the paper that was to be prepared. He may have told me what the purpose was, but if he did I have forgotten it entirely.

161 Cross-examination.

By Mr. GLOVER:

Q. Who is Mr. Bagg, Mr. Perry. the notary?

A. I only know Mr. Bagg from seeing his name on the paper. I suppose from that that he is a notary.

Q. You do not know where his office is?

A. No, sir; I never saw him in my life to know him.

Q. You do not know whether his office is with Beall or the safe-deposit company—with Beall or somebody else?

A. No; I do not know anything about it at all.

Q. I notice an addendum to the deed of trust as follows: "We hereby agree, in consideration of the execution and delivery of the

above-named deed of trust, to grant to John E. Beall the extension or renewal therein provided for upon the contingencies therein provided for and not otherwise," purporting to be signed by the Misses Patten, four of them. Do you know when their signatures were attached?

A. I do not know; I do not know that they are their signatures.

Q. What was your object in drafting that addendum?

A. It has been a long time, but my impression now is that I thought it would be a protection to Mr. Snyder, if that contingency arose, to have the signatures of the *cestui que trusts*.

Q. It was intended by you, then, to be a part of the instru-
162 ment, just as the signature of the principal?

A. Yes.

Redirect examination.

By Mr. DAVIS:

Q. You knew at the time of the decision of our court in the case of Keller *v.* Ashford?

A. Well, a man who is presumed to know the law—whether or not this Keller and Ashford comes under that presumption you will have to decide. In point of fact, I do not think that Keller and Ashford had been decided at that time by the Supreme Court of the United States.

Q. I know, but I mean by the supreme court of the District of Columbia.

A. If I did, I did not pay any attention to it.

Q. You did this out of abundant caution?

A. Yes, sir.

By consent of counsel the paper marked "Complainants' Exhibit Treasury Department" is offered in evidence, to have the same force and effect as though the facts therein stated were deposed to by the proper officer of the Treasury Dep't called in that behalf, saving, however, to the defendant- all exceptions on the ground of irrelevancy or immateriality of the facts thereby or therein appearing.

163 Mr. GLOVER: It being understood that the defendant- objects to the introduction of such evidence on these grounds, first, that under the pleadings in this case the evidence is not pertinent or material at all to any of the issues, if there be but one issue, to wit, as the defendant- supposes the complainant- at times contends the satisfaction of the alleged debt by the legacies in the will, the transfer being posterior in time to the date of the will is not evidence admissible as affecting the question of satisfaction, and because the same is in any light irrelevant and immaterial.

R. ROSS PERRY.

Subscribed and sworn to before me this 3rd day of June, A. D. 1891.

ALEXANDER H. GALT, *Examiner.*

Whereupon, owing to an engagement of witness Beall summoned to appear at this hour, which engagement it is impossible for him to avoid or postpone, adjourned until Wednesday morning, April 22nd, 1891, at 10.30 o'clock.

164 APRIL 22ND, 1891—10.30 a. m.

Met pursuant to adjournment.
Present as before.

Whereupon JOHN E. BEALL, a witness produced on the part and behalf of the complainants, being first duly sworn, deposes and says:

By Mr. DAVIS:

Q. Mr. Beall, please state your name, age, residence, and occupation.

A. John E. Beall; thirty-four years of age; live at 3053 U street, Georgetown; occupation, dealer in real estate.

Q. How long have you been engaged in the real-estate business?

A. About six years.

Q. Did you, in her lifetime, know Mrs. Anastasia Patten, late of the District of Columbia?

A. Yes, sir; I did.

Q. For how long a time before her death did you know her?

A. I think I met her in the year 1884.

Q. What, if any, relation did you stand towards her in a business way?

A. In most of her transactions in real estate I acted as her agent.

Q. In October, 1887, did you have any transaction with her of a personal nature?

165 Mr. GLOVER: I object to any testimony as to any conversations between the witness and Mrs. Patten on the ground that they are irrelevant and immaterial, and that no declarations of hers subsequent to the date of the will, which is made an exhibit to the bill of complaint, are competent evidence on a question of satisfaction.

A. I did.

Q. What was that transaction?

A. I made an application to her for a loan of $45,000.

Q. Was the loan made?

Mr. GLOVER: This evidence is also objected to on the ground that *is* it tends to prove a part payment to the complainants it is immaterial and irrelevant, and also on the ground that the complainants are concluded by the pleadings in the case upon that issue to the effect that there was no part payment.

A. It was.

Q. Please state the circumstances attending that transaction fully.

Mr. GLOVER: Objected to on the same grounds.

A. I wished to borrow $45,000 upon the security of 386 shares of the capital stock of the Washington Brick Machine Company, and I stated the then market value of the stock and represented that it was good and ample security for that amount. Mrs. Patten accepted the same and gave me a check for $45,000 upon Riggs
166 and Company, which I deposited to my credit, paid my loans upon the stock in Riggs and Company and the National Metropolitan bank, prepared certain papers in conjunction with the attorney of the National Safe Deposit Company, and I think I met Mrs. Patten at the safe-deposit company's office, where the papers were signed and turned over to Mr. Snyder when I delivered the stock, which was also turned over to Mr. Snyder.

Q. How was your loan secured—I mean what form did the paper making the security take?

Mr. GLOVER: Same objection.

A. The form was the deed of trust.

Q. Do you know who prepared that deed of trust?

A. I prepared the draft of the deed of trust and submitted it to Mr. Snyder, who referred it to his attorney, Mr. R. Ross Perry, who finally drew the papers and the notes, I think, in his own handwriting.

Q. What relation did Mr. Snyder have to the transaction?

A. He was the trustee.

Q. Look at the paper now shown you (handing witness Complainants' Exhibit No. 7) and state if you recognize it.

A. (After examining.) The paper handed to me is the original deed of trust securing said loan.

Q. Look at the signature, John E. Beall. In whose handwriting is that?

A. That is my genuine signature.

167 Q. And look at the signatures purporting to be those of the Misses Patten at the foot of the paper. Whose signatures are those?

A. Those are, to the best of my knowledge and belief, the genuine signatures of Mary Ellen Patten, Josephine Antoinette Patten, Edith Agnes Patten, and Helen Patten.

Q. What familiarity, if any, have you with the handwriting of those ladies?

A. I have seen their handwriting very often.

Q. Have you seen them write?

A. I have seen them write many times.

Q. Look at the papers now shown you (handing witness Complainants' Exhibits R. R. P. Nos. 1 to 13, both inclusive) and state if you recognize them.

A. The papers handed me are, first, the principal note for $45,000, given to the order of Mary Ellen Patten, Josephine Antoinette Patten, Edith Agnes Patten, and Helen Patten, to secure the principal of the amount loaned, and the other twelve notes are notes for

$675, each dated October 15, 1887, and payable at intervals of three months, given for the interest upon said $45,000 loan, and are signed by me, and are the identical notes secured by the deed of trust to which I have just testified.

Q. Look at the endorsements, Mary E. Patten, Josephine A. Patten, Edith Patten, and Helen Patten, on the back of No. 1, No. 7, No. 8, No. 9, No. 10, No. 11, No. 12, and No. 13, and state
168 if you know in whose handwriting those respective endorsements are.

A. They are, to the best of my knowledge and belief, in the genuine handwriting of Mary E. Patten, Josephine A. Patten, Edith Patten, and Helen Patten.

Q. You have stated that you applied to Mrs. Patten for this loan of $45,000. These notes appear to be made to the order of four of her daughters, and not to her order, and the deed of trust securing them also so recites. What, if any, explanation can you give of that fact?

Mr. GLOVER: Same objection.

A. They were so made at the instruction of Mrs. Anastasia Patten.

Q. Why, if you know?

A. Because she said that——

Mr. GLOVER: Same objection.

The WITNESS (continuing): Because she said that the money was advanced to them out of the fund belonging to them out of their father's estate, and that she wished them to have the income of that amount of money.

Q. What, if anything, was said at the time in relation to Mrs. Glover, the other daughter of Mrs. Patten?

Mr. GLOVER: I object to that on the same ground, because it is leading and because the declarations of Mrs. Patten in the absence of Mrs. Glover are not competent and not evidence against her.

169 A. I made the natural inquiry if these *a*pa-ers should be drawn to the general order of all her five daughters. She said "No;" that she wished them to be drawn to the order of the four unmarried daughters, and she wished the interest notes made at intervals of three months, so that they might have the income, and she used the words "pin money," and further declared that she had never made them any allowance, and she wished them to have for themselves every three months the interest of this money to spend for themselves.

Q. Well, what, if anything, did she say about Mrs. Glover?

Mr. GLOVER: I object to that as leading and on the same grounds. You had better ask the witness for the whole conversation, Mr. Davis.

Mr. DAVIS: It can be brought out, I think, in this way. I do not expect him to say anything but give the whole conversation.

A. She said she had made certain advances to Mrs. Glover.

Q. Now, have you given all of the conversation that you remember?

A. I have given the practical, salient points of the conversation. I cannot repeat it verbatim, but I distinctly remember the circumstances of the conversation as it took place down to the very point of knowing the exact position where she sat, and it was in the boudoir at the house.

170 Q. Well, see if I can refresh your recollection——

Mr. GLOVER: I object to your leading your witness and practically instructing him what to say. I do not think you have any right, and I think, as a lawyer and a fair man, that you will agree with me, when you are on the direct examination of a willing witness or one not unwilling and refreshing his recollection in the way of suggestions as to the way in which his testimony should be. Mr. Davis submits that he is reasonably familiar with the rules of evidence and the manner of examining witnesses, and that the question about to be is wholly within the point of propriety and those rules.

To the witness: What, if anything, was said by Mrs. Patten in that conversation or while the transaction was being made with reference to the source of the money which she said she had advanced to Mrs. Glover?

Mr. GLOVER: I object to that, and I shall move to strike it out at the proper time.

A. In answer to your question I will say that I thought I had said in my previous answer that it was for money belonging to the four girls from the proceeds of their father's estate which had never been divided.

Q. Do you mean the four girls?

A. Yes, sir.

Q. Do you mean that Mrs. Patten said that the money she had given Mrs. Glover belonged to the four girls?

171 Mr. GLOVER: I object to that on the same grounds.

A. Of course not. She said that $45,000 was being distributed in this manner to the four girls as a part of what was coming to them from their father's estate, and she said she had made advances to Mrs. Glover.

Q. Now the point is, what did Mrs. Patten say, if she said anything about it, that she had made the advances to Mrs. Glover?

A. I do not recollect that she made any specific statement upon that point.

Q. You were party defendant to a suit, I believe, in equity, 11742, instituted by Mr. and Mrs. Glover against you and some others and you made an answer?

Mr. GLOVER: I propose to apply to the court and see if you can force this question.

Mr. DAVIS (continuing): An answer in that suit, did you not?

A. Make an answer? Yes, sir.

Q. Do you know of anything in that answer in respect of which you were mistaken at the time of making it?

Mr. GLOVER: I object on the grounds that this is an attempt to impeach Mr. Beall by evidence of previous declarations, which is a gross violation of the rules of evidence.

A. Before answering that question I should like to refer to the answer.

Q. Well, the answer is on file at the clerk's office, and,
172 under the rule of the court, cannot be withdrawn. My recollection of the answer, which is the only thing that I can bring to your notice under the rules of the court, is that in it you state that Mrs. Patten declared to you that the advance which she had made to Mrs. Glover, of which you have already spoken, had come from the estate of the father. If there be such a statement as that in the answer, what do you say as to its being correct or not?

Mr. GLOVER: Objected to on the same grounds.

A. If I made that statement I am sure it is true, because I made that answer after very serious reflection, and it was made some time ago, and that may have escaped my memory in the meantime. The facts that I have stated in that answer were absolutely true.

Q. Now, what, if any, present recollection have you apart from what may or may not be in that answer as to Mrs. Patten having stated any source?

A. Mrs. Patten may have stated that fact that the advance was made from Mrs. Glover's share of her father's estate.

Q. My question is, Mr. Beall, not what Mrs. Patten may or may not have said, but whether you have any present recollection of her saying anything on that subject.

Mr. GLOVER: Objected to on the same grounds and as an attempt to force the witness, who seems to be perfectly fair, to testify now that he remembers a thing which he said just now he did not remember.

173 A. I cannot swear positively from my present recollection that she positively made that statement. Mrs. Patten knew that I had some knowledge of this advance to Mrs. Glover, and when I spoke of making these notes to the joint order of the five, Mrs. Patten specifically explained that the advance to the four was from the money due them from their father's estate, and said at the same time that Mrs. Glover had had her portion, but whether she specifically stated that it was from her husband's property, whether she used those words, I do not now remember, although she may have said so, and if I swore to it in that answer I think it was unquestionably the fact, and speaking at this late day, it has been

now almost three and a half years since the date of the transaction, my memory may have failed me.

Q. Now, with reference to this $45,000 note secured by the deed of trust to which your attention has been called, what has become of the debt represented by that?

Mr. GLOVER: Same objection.

A. It has all been paid.

Q. To whom?

A. To the holders of the note, Mary E. Patten, Josephine A. Patten, Edith A. Patten, and Helen Patten.

Q. You have made some reference to the boudoir. In whose house was that boudoir of which you speak?

A. At Mrs. Patten's house, and it was her boudoir leading
174 from her bed-room into the main hall of the residence.

Q. That is the house on Mass. Ave.?

A. The house on Mass. Ave.; yes, sir.

Q. Who were present when you made application to Mrs. Patten in the first instance, if any one?

A. The application was made by me in writing upon a Saturday afternoon and left at the house by me. I called on Monday to have my answer, which she gave to me personally, and I have no recollection of any one being present.

Q. Who, if any one, besides you and Mrs. Patten was present at the time the transaction was consummated in the safe-deposit company's office?

A. B. P. Snyder; although I might qualify it by saying that Mr. B. P. Snyder may not have been present during all of our conversation, because we may have retired to one of the compartments, but when the final transfer of the securities was made Mr. Snyder was present and received them; he kept continual possession until I had them released by paying the money.

Q. With special reference, now, to that portion of Mrs. Patten's conversation in which she spoke of her desire to have this money invested in the names of her four daughters, and also spoke of the previous advance to Mrs. Glover, where did that conversation take place or that part of the conversation take place, if you remember?

A. In the boudoir off from her bed-chamber in her residence, No. 2122 Mass. Ave.

175 Q. And at that time, as I understand you, you remember of no one being present?

A. I do not, although some of the daughters may have been present, but I think it is extremely improbable.

Q. Now, after Mrs. Patten had consented to make the loan I understood you to say that you had made a draft of the deed of trust that you proposed to sign. To whom did you give that, to Mr. Snyder or to Mrs. Patten herself?

Mr. GLOVER: The previous objections are intended to apply to this entire examination without interrupting the witness.

Mr. DAVIS: I understand that.

A. I think it was handed to Mr. Snyder, because Mrs. Patten in all matters of legal papers was in the habit of trusting to her advisers, and it is my recollection that the papers took that course.

Q. Then when did you first learn that Mr. Perry was to prepare a paper somewhat different from yours?

A. Mr. Perry informed me that if he undertook this—it is my recollection that Mr. Snyder informed me that if he undertook the trust he would like to have the papers prepared by his own attorney.

Q. Where did you sign the deed of trust?

A. I think I signed the deed of trust in the National Safe Deposit Company's office and my recollection is corroborated in my
176 own mind by the fact that Geo. W. Bagg was the notary who took the acknowledgment, and he has an office immediately above.

Q. Bagg's office, you mean, is in the National Safe Deposit building?

A. No; it was in the then National Safe Deposit building before the new building was constructed.

Mr. GLOVER: Where was that building at that time?

The WITNESS: Mr. Bagg then had his office above the bank in the old building.

Mr. DAVIS: Mr. Glover's question is, where was the National Safe Deposit Company's building at that time?

The WITNESS: Where it is now; on the same piece of ground.

Mr. GLOVER: But a different building?

The WITNESS: Yes, sir; an old building.

(By Mr. DAVIS:)

Q. And that is at the corner of 15th St. and New York avenue?

A. Yes, sir.

Q. Did you or not pay the interest notes as they became due?

A. I did.

Q. Where and to whom?

A. My recollection is that I paid all of the interest notes unendorsed by the four payees to Mr. B. P. Snyder, which accounts for the absence of the endorsements, because, if I remember aright, and I think I do, they were kept there and were simply handed to
177 me as I wished to pay them and as they fell due—in other words, they were not in their regular bank for collection. The remaining notes bearing the endorsements were placed in the banking-house of Riggs & Co., and, of course, in the regular course of business were endorsed and I paid those at that place.

Cross-examination.

By Mr. GLOVER:

Q. How much was your stock pledged for before you got the loan from Mrs. Patten?

Mr. DAVIS: Objected to as irrelevant and immaterial.

Mr. GLOVER (continuing): You stated that when you got the loan from Mrs. Patten you took up the stock which had been pledged at Riggs' and somewhere else for a certain amount of money. How much was it pledged for?

Mr. DAVIS: Objected to as irresponsive and immaterial.

A. I cannot remember, but I think it was practically the same amount.

Q. Mr. Beall, was this transaction in connection with any other transaction of yours and Mrs. Patten; was it connected with any other loan?

A. That I cannot remember, except to say that I borrowed of Mrs. Patten $8,000, which was secured on the Trinidad lots at that time or somewhere about that time. I was negotiating with Mrs. Patten for $25,000 to build some houses at 3rd and I streets northeast, and she *road* with me to look at the property and then
178 agreed to loan me the money in consideration of the fact that I would give up an interest which I then had in her promise to give me in Dumblane. She wished to own Dumblane entirely herself, and I acceded to her wish. Of course I was to pay for my interest in Dumblane. I was to pay my share of the money, but afterwards she loaned the $8,000, and when I asked her to give me the remainder of the $25,000 she said she could not do it or she would rather not do it, and I kept the $8,000 and gave her the Trinidad lots as security.

Q. Did you have any dealings with Gardner Hubbard that were connected directly or indirectly with this loan?

Mr. DAVIS: Same objection as before.

A. The $25,000 loan? None whatever; he had no connection with it in any shape or form.

Q. Was this note collateral or incidental to any other loan or note of yours?

A. Had no connection. It was an entirely separate proposition and transaction, and there was surrounding it no element of exchange of transactions as was involved in the other cases.

Q. You have just said the remaining notes were paid at Riggs & Co.'s. That was after the death of Mrs. Patten, was it not?

A. I think so; but the notes will show.

Q. (Handing witness notes.) Just indicate from the notes which one was paid at Riggs & Co.

179 A. (Examining.) Notes Nos. 7, 8, 9, 10, 11, and 13; they bear the stamp of Riggs & Co., "paid."

Q. Paid at their maturity, were they?

A. Yes, sir; on or before their maturity.

Q. What do you mean by "before"? How long before? Take No. 7, for instance.

A. No. 7 was due on the 18th of April and was paid on the 16th. No. 8 was due on the 18th of July and paid on the 16th.

Q. I believe you are the real-estate agent of the young ladies now, are you not, the Misses Patten?

A. In some of their transactions.
Q. You collect the rents for their property, do you not?
A. Yes, sir.
Q. And have done so since the death of Mrs. Patten?
A. Yes, sir.
Q. Have you seen them lately—yesterday, for instance?
A. No, sir; I have not seen them for a week, I think.
Q. You were engaged yesterday, I believe, at two o'clock?
A. Yes, sir.
Q. For how long?
A. I was engaged in a meeting of the Rockville Turnpike Company, and left my office at half past five o'clock.
Q. Were you engaged up to that hour with them?
A. I was engaged, I think, up to five.
Q. Did you see Mr. Davis yesterday afternoon?
A. No, sir.

180 Q. Where were you born, Mr. Beall?
A. In Baltimore, Md.
Q. When did you leave there?
A. When I was one month old.
Q. And where did you go?
A. And went to Georgetown, D. C.
Q. Been there ever since?
A. Yes, sir.
Q. Have you always been in the real-estate business?
A. No, sir.
Q. What business were you in—what was the first business?
A. I was for five years a law student in the office of Hughes, Denver and Peck.
Q. And after that?
A. After that I was for about seven years a book-keeper and acting treasurer of the Washington Brick Machine Company; for about a year and a half I was a cashier for Bateman & Co., bankers, from which place I resigned and went into the real-estate business.
Q. And have been in it ever since?
A. Yes, sir.
Q. In Washington?
A. Yes, sir.
Q. Do you remember being present at the opening of the box of Mrs. Patten?

181 Mr. DAVIS: Objected to as irrelevant and immaterial and not responsive to the direct examination.

A. I do.
Q. Who were present besides yourself, Mr. Beall?

Mr. DAVIS: Same objection.

A. To the best of my recollection, knowledge, and belief, there were present besides myself Mr. and Mrs. Glover and some of the young ladies, I think, probably all, and Judge Clark.
Q. Are you not speaking now of the opening at the house?

Mr. DAVIS: Same objection.

A. I am speaking of the morning when we were all at the house.

Q. My question was not properly framed. I meant to ask you were you present at the National Safe Deposit Co. when the safe-deposit box was opened?

Mr. DAVIS: Same objection.

A. I was.

Q. Now, do you remember who were present, Mr. Beall?

Mr. DAVIS: Same objection.

A. Miss Josephine Patten.

Q. And who else? I was there, was I not?

Mr. DAVIS: Same objection.

A. I believe you were.

Q. And Senator Stewart?

A. I think he was.

Q. And Mr. Upton?

182 Mr. DAVIS: Same objection.

A. I think so, and I believe Mr. C. C. Glover, too. Well, it has been so long ago that I could not swear to every one who was there. I know Miss Josephine was present, and I was present, and since you have refreshed my memory I remember that you were.

Q. Well, the box belonging to Mrs. Patten was opened, was it not?

A. It was.

Q. And the contents examined?

A. Yes, sir.

Q. And a list made of them?

A. I do not remember specifically as to whether the list was made then and there or not.

Mr. DAVIS: Same objection.

Q. Don't you remember sitting opposite Miss Josephine and the box being opened and the contents handed out, and that as you sat opposite her at the table you made a short list of the contents which I think you afterwards furnished me; something of that kind?

Mr. DAVIS: Same objection.

A. I have some kind of recollection of that sort, but just as to what that list was or all the details or circumstances I cannot now remember.

Q. Do you remember something about some of your notes being produced at that time, these notes that you have spoken about?

183 A. I remember the production of the $8,000 note.

Q. Do you remember saying, on the production of the contents of the box, "There is one note of mine; I would like to

take it out and pay it," and Mr. Stewart saying, "No; don't take anything out," and Mr. Snyder saying, "No, Mr. Beall; you can pay it if you wish to pay it and can get the note afterwards"—these notes that were payable to the order of the young ladies? Don't you remember that?

Mr. DAVIS: Same objection.

A. I have no distinct recollection about that.

Q. No distinct recollection about what occurred?

A. No. I remember that there was jewelry in that box. I remember that there was disappointment that there were no Government bonds there; it was supposed that there were some, or there had been some talk about there being there, and I remember that you said something to me at the entrance of the savings bank in regard to furnishing you with a list of notes. That list of notes was afterwards furnished you, and that, of course, will, I suppose, show. I cannot refresh my memory and give any detailed list of any of the things that were in that box. I remember distinctly, because it applied to me personally, that that $8,000 note of mine was there.

Q. Now, this question of the list of notes—I will ask you now if that colloquy was not between you and me at the door leading on to the street after the interview—after the box had been sent back.

184 Mr. DAVIS: Same objection.

A. Yes; I distinctly remember that.

Q. My question was directed more to what happened while the box was being opened. Do you remember any discussion of the bond to be given by the young ladies as executrices at that time?

Mr. DAVIS: Objected to on the grounds as heretofore stated, and I give notice that I shall move to strike from the deposition of the witness all portions that may be brought out by questions objected to, on the ground of irresponsiveness to the direct examination.

Mr. GLOVER (continuing): Any talk about the bond between Stewart and me and Upton?

A. No; I do not recollect that; that was a matter that I had no interest in.

Q. You were present during the whole of this interview, were you not—during the whole time the box was under examination?

A. I believe I was, but I may have stepped out while that conversation took place.

Q. Did you step out? Do you remember stepping out at all?

A. I do not know whether I did or not; we were right there in a very small space. The chances are I may have stepped out.

Q. Well, have you any recollection of stepping out?

A. I do not know whether I did or not.

185 Q. There were some certificates of stock in that box, were there not?

Mr. DAVIS: Same objection.

A. I believe there were some certificates of stock of the Pennsylvania Telephone and the Chesapeake & Potomac Telephone Company.

Q. Possibly some others?

A. Probably there were some brick company's shares belonging to Mrs. Patten. I think there were. I remember distinctly that there was jewelry in the box and I know no Government bonds. I remember that, but as to exactly what there was I do not know.

Q. You have been a party to some of these proceedings—the bill of discovery—have you not?

A. Yes, sir.

Q. And do you remember an agreement which figures in those proceedings—an agreement or paper signed some time in 1885 by all five of Mrs. Patten's claimants—as figuring in that litigation? Do you remember such an agreement?

Mr. DAVIS: Same objection.

A. I have heard it read, but I do not think I have ever seen it.

Q. Don't you remember it was produced that day?

A. I could not swear that it was.

Q. Could you swear that it was not?

A. No; I would not swear that it was not. That is the position I must take. I cannot swear that there was anything there.

186 I do not swear to what you ask me about and I could not swear it was not there.

Q. Do you remember any discussion between Senator Stewart and myself as to whether I should see those notes of yours that were taken back for a moment and put back in the box? Do you remember Stewart's saying, "Mr. Glover ought to be allowed to see them"? I refer, now, to some of those interest notes that were payable to the order of the young ladies, about which you have just testified. Don't you remember that they were in the box, some of them, at that time?

Mr. DAVIS: Same objection.

A. I could not swear that they were in the box or were not in the box.

Q. What is your best impression about it, or recollection?

A. I have no recollection about it; I suppose the list of notes will show.

Q. We will come to that presently. If a list ever came to me, it would not show where the notes are at this time.

The WITNESS: Can I see the list of notes?

Mr. GLOVER: I do not remember ever receiving any such list; I received a list of the contents of the box. What I am asking you is your present recollection, without turning to any documents or anything of that kind, as to whether there were not some of these notes payable to the order of these young ladies in the box at the time.

187 A. That question I cannot answer.

Q. There is an agreement figuring in this case dated about

Sept., 1885, signed by Mrs. Glover and her four sisters, referring to their father's estate and their mother's guardianship and administratorship thereof, about which I wish to ask this question: Was not that agreement produced when that box was opened?

Mr. DAVIS: Same objection as before.

A. Well, Mr. Glover, that I cannot remember. I would not say that it was not, but as there were so many other witnesses to that proceeding beside myself I do not say that——

Mr. GLOVER: Still it is pertinent. Now, I will ask you if this colloquy occurred: Mr. Upton said, when some of these notes were produced, "Those are the interest notes," and he also said, "There is a note in there overdue; I had better take that out and pay it." I am tryiug to see if you can recall it. Then Stewart said, "Take out nothing," and Snyder said, "No, Mr. Beall; if you want to pay it, pay it and take it out subsequently," to which Beall assented. Did that occur—do you recall anything of that kind?

Mr. DAVIS: Same objection.

A. I think I do remember that.

Q. Now, do you remember this conversation. I am simply stating it with an idea that it may wake your recollection, possibly, that the agreement of which I have spoken was referred to and
188 produced and discussed. Said Mr. Stewart to Mr. Glover, "Mr. Glover, this is our outlet to avoid giving a heavy bond." I said, "How so?" He said, "Why, don't you understand?" "Let me tell him," said Judge Upton. "These young ladies are all partners of their mother; she never made an investment that they did not assent to. Now, conceding that their interest is only worth $100,000, just set aside $400,000 out of the estate, and that will give about $125,000 or $130,000, and we can give a bond for double that." Do you remember a discussion resembling that at the time?

Mr. DAVIS: Same objection.

A. I do not. I have nothing impressed upon my memory about the details of the matter of which you speak, because I was not interested in it in any way and it did not impress itself upon my memory.

Q. Said I, "Mr. Upton, that would not be fair to the court; we ought not to deceive the court, although we might desire to give a small bond. I have no objection to your stating all the facts, that this property was all in Mrs. Patten's name, and that you contend that the young ladies are part owners, but you must deal fairly with the court and tell everything about it. If you set aside $100,000 as an undivided interest for the young ladies, of course you will set aside $100,000 for Mrs. Glover; then there won't be any bond given." Then said Miss Josephine, "I do not know what we come here to talk to Mr. Glover for every day; he has got nothing to do
189 with this estate. I won't meet with him any more at all."

I said nothing; nobody said anything. Then said Miss Josephine, "Mr. Stewart, does that mean Gussie is to get $100,000

more than we?" Senator Stewart said, "We will talk about that afterwards." Then said Miss Josephine, "We will never submit to that." Do you recollect anything of that kind?

A. No, sir.

Q. Can you say it did not occur?

A. I cannot say that.

Q. Then said Miss Josephine, "I do not know what we come here to talk with Mr. Glover for; he has nothing to do with this estate. I will not speak with him again." Do you remember Miss Josephine flying off in that style? Just try to recollect a little.

Mr. DAVIS: Same objection.

A. I do remember that Miss Josephine spoke sharply at that time and questioned your right to——

Mr. GLOVER: To exist.

The WITNESS: No; she questioned your participation in the discussion, I might put it.

Mr. GLOVER:

Q. In the proceedings?

A. Yes, sir.

Q. Do you remember this, that Miss Josephine then said, "Mr. Stewart, does that mean that Gussie is to get $100,000 more than me?" and Stewart said, "We will talk about that hereafter"? She said, "We will never submit to that. I was present when
190 mamma gave those bonds to sister, and one of my sisters was present, and mamma said to Gussie, 'Gussie, this is from your father's estate,'" and I then said, "Miss Josephine, Mrs. Glover does not remember that," and then she said—well, I do not know what she said. Do you remember a discussion of that kind?

Mr. DAVIS: Same objection.

A. I remember Miss Josie losing her temper in the way that I have indicated, and it might be probable that some further discussion may have occurred, but the details of it I cannot remember.

Q. You cannot say that these things did not occur?

A. No, sir; I cannot.

Q. Now, Mr. Beall, about this list of notes you have just referred to. In the conversation between you and me at the door of the safe-deposit company, after the closing of the box and I was going out, in which I called you to task, did I not, for not furnishing me the list of notes?

Mr. DAVIS: Same objection.

A. I recall that occurrence, and you did call me to task about it.

Q. And previously we had had some discussion and a little feeling about that, had we not—that is, I had asked you for it a number of times?

Mr. DAVIS: Same objection.

A. I do not know that.

Q. Didn't you refer at this time to your having agreed to give it to me and telling me Senator Stewart had instructed you not
191 to give it to me until this interview at the box was over, but now your would give it to me?

Mr. DAVIS: Same objection.

A. I do not remember whether that was the exact circumstance; I know this, that there was a reason why it had not been given to you, and I gave you some reason, and I think it was—the reason was—that I wanted instruction from counsel, and I think I said it was because I had been told not to give it without instruction of counsel.

Q. Now, didn't you say that Mr. Stewart had told you not to give it until after this interview at the box was over?

A. I do not remember.

Q. Well, do you remember that day promising to give it to me?

Mr. DAVIS: Same objection.

A. I think I did promise to give it to you, but I want to call your attention to the fact that that list of notes was a list of the personal assets of the estate as I knew them to exist independent of the contents of the box in the safe-deposit company.

Mr. GLOVER: Exactly so.

The WITNESS: That is my remembrance.

Q. I think they were called the real-estate notes?

A. Yes, sir.

Q. Now, didn't you say at that time that the young ladies had refused to give it because the application had been made by me instead of Mrs. Glover, or something of that kind, they having a feeling about me?

Mr. DAVIS: Same objection.

192 A. Now, these details, Mr. Glover, I do not remember.

Q. Now, let me go on a little. Do you remember coming to the Richmond hotel, where Mrs. Glover and I were staying, with a pleading to sign in the petition case of Leavitt against Bostwick and meeting me at the foot of the elevator and our parting angrily over this question of those notes?

Mr. DAVIS: Same objection.

A. I do, but as to what that paper was I do not remember. It was most likely what you say.

Q. Let me refresh your recollection. You are a lawyer by education and you were assisting the young ladies as far as you could at the time without charge and had undertaken to file the first formal pleadings in this partition case for all of them, Mrs. Glover included.

A. I remember now.

Q. And you had a paper for her to sign and I happened to meet you at the foot of the elevator. Is that correct?

A. Yes, sir; I do not remember the paper.

Q. And you stating to me that you had that pleading, and then I took you to task about this list of notes and was very angry because we had not received it. Do you remember that?

A. I remember that you were angry.

Q. About the notes?

A. Yes, sir; about the list of notes.

Q. Now, didn't you tell me this, Mr. Beall, that you had
193 made a list of those notes as the agent of Miss Josephine Patten and that you could not deliver it without her consent; something of that kind?

Mr. DAVIS: Same objection.

A. I believe that I did say that, but whether I said that I was the agent of Miss Josephine alone and not the agent of the four other ladies I do not know.

Q. That you had made the list simply in the capacity of their agent, and that I could not get it now without further instruction?

A. I remember that now.

Q. You didn't have their permission?

A. I did have their permission afterwards and furnished you with the list.

Q. I think you are mistaken about that; in fact I know you are. I was going to ask you was not that the last interview we had on the subject?

A. It was the last interview; yes; but my remembrance is that I made that list of notes and sent it to the Richmond, to Mrs. Glover, and I think that you do remember that.

Q. No; let me see if I cannot refresh your recollection.

The WITNESS: You afterwards objected to the character of the list; you said that certain notes had been omitted, so you must have had the list.

Mr. GLOVER: Did you not tell me on that day at the close of our negotiations on the subject of that list that you had made
194 the list as the agent for Miss Josephine, or, as you say, probably for all of the young ladies, and that because they would not give their consent and because you were merely an instrument of theirs you could not furnish the list, and was not that the last communication we had on the subject?

Mr. DAVIS: Same objection.

A. I think it was, but I think I qualified that by stating that I could not give the list unless instructed by them or their attorneys, and it is then my recollection further that Senator Stewart instructed me to furnish you and Mrs. Glover with that list, and that I mailed it or sent it to Mrs. Glover at the Richmond.

Q. Now, this interview at the Richmond was after the interview at the safe deposit, was it not?

Mr. DAVIS: Same objection.

A. I think so, but I could not swear to it.

Q. All personal communication between you and me was broken

off after that interview; you felt indignant at the way I had spoken and I felt indignant about not getting the list, and shortly after Mrs. Glover took her rent out of your hands?

A. Yes.

Q. Now, you say you remember or do you remember sending the list afterwards—how did you send it?

A. I think I sent it by messenger.

Q. A District messenger?

A. No.

195 Q. What messenger?

A. My own messenger.

Q. One of the people in your office?

A. One of the employees in the office; yes.

Q. What person?

A. That I could not remember.

Q. Have you the same employees now?

A. No.

Q. You could ascertain who the employees were at that time, I suppose?

Mr. DAVIS: All this is objected to on the same grounds.

A. I could, but I might have sent it by somebody who was not an employee.

Q. Have you any distinct recollection of whom you sent it by?

A. No.

Q. Or when you sent?

A. No; I have a very distinct recollection of going to Senator Stewart's room and speaking to him about it and my receiving instruction from him to send it.

Q. That is not the point. Did you send it?

A. To the very best of my recollection, knowledge, and belief, I did.

Q. Would you swear that you did positively?

A. No, sir; you deny that I did, do you?

Mr. GLOVER: Positively.

196 The WITNESS: I——.

Mr. DAVIS: I object to any colloquy in which Mr. Glover appears in the light of a witness.

Mr. GLOVER: If he asks me a question I have to answer it. To the witness: Do you remember, Mr. Beall, at the time this difficulty was first mooted between the heirs, advising the young ladies as to what was the best course to get over the difficulty or avoid the difficulty?

Mr. DAVIS: I object upon the same grounds as heretofore, and, further, because it has developed upon the cross-examination of the witness that at the time inquired of he stood to the complainants in the character of an attorney, and any communication in the nature of a professional communication between the parties the witness may not depose to, and, further, as the direct examination of this witness was confined to certain specific matters and within certain defined limits, I instruct the witness that he is not obliged to

answer any questions objected to on the ground that it is not responsive to the direct examination.

Q. For instance, if Mrs. Glover would sign a paper acknowledging to have received this sum as an advance from the estate, that would make it all right?

Mr. DAVIS: Same objection.

A. I will answer the question by saying that at no time have I been asked for any advice as to the settlement of these difficulties.

197 Q. Did you give that advice without being asked for it?

Mr. DAVIS: Same objection.

A. I have had general talks on the subject with these young ladies, but upon what occasion and as to what specific points and as to the details of which it would be impossible for me to give any light or information.

Q. That is a general answer. Now, can you say that you did not tell them to get Mrs. Glover to sign a paper to that effect and substance?

Mr. DAVIS: Same objection.

A. I have no recollection of having ever advised them to have Mrs. Glover sign any paper.

Q. Well, can you say that you did not; have you any recollection that you did not?

Mr. DAVIS: Same objection.

A. As far as my very best recollection will go, I do not remember of ever advising them to ask Mrs. Glover to sign any paper.

Q. Now, Mr. Beall, at one of these times when you and I discussed this list of notes do you remember of saying to me that you had so advised the young ladies?

Mr. DAVIS: Same objection.

Mr. GLOVER (continuing): That if Mrs. Glover would sign a paper that she would account for this as an advancement that that would settle the whole matter?

A. Mr. Glover, I have no recollection of that matter; that

198 would be entirely voluntary on my part if it took place.

Q. You were on good terms with everybody then?

A. I know that I was not involved in any settlement at all and took no part in it.

Q. It is a question of your recollection?

A. I do not know.

Q. Can you say that that last did not occur?

A. I could almost positively swear that it did not.

Q. Can you positively swear that it did not?

A. I can positively swear that I have not been a party to any settlement between Mrs. Glover and the young ladies with the consent or request of any one of the five.

Q. That is not the point. You might have done this simply as a good-natured desire without desiring to be an adviser.

A. If I did it I ought not to have done it. I had no business to do it; but I do not think I was so indiscreet

Q. Well, can you swear positively that you did not? It is a question of recollection.

Mr. DAVIS: Same objection.

A. I can swear positively that I have no recollection of participating in any such matter.

Q. What became of the will that you witnessed of Mrs. Patten, some time in 1887, the fall or winter of 1887?

Mr. DAVIS: Same objection.

A. I never witnessed any will of Mrs. Patten's.

Q. Did you not?

199 A. No, sir.

Q. Are you sure of that?

A. I am, positively.

Q. Do you remember, after Mrs. Patten's death and after her body was brought home from Vermont, driving up to the house in a carriage with me on one occasion?

Mr. DAVIS: Same objection.

A. Yes, sir; I remember that.

Q. Do you remember my asking you at that time whether Mrs. Patten had left a will?

A. I do.

Q. Do you remember my asking you at that time about any notes of yours of which the interest was paid to the young ladies?

Mr. DAVIS: Same objection.

A. I do not remember that.

Q. Do you remember what conversation in addition to the question about the will occurred on that drive together, you and I?

A. You asked me—I distinctly remember you asked me—what the estate would amount to, and I told you I could not state specifically, but as to any particular question, I do not remember you asked me any except general questions.

Q. Do you remember that I asked you what the estate amounted to?

A. Yes, sir.

200 Q. You remember that?

A. Yes, sir; distinctly, and you asked me if I knew anything about a will.

Q. Well, at this same drive, did you tell me that it was a mistake and that there were no notes of yours on which the young ladies received the income?

A. I do not remember that you asked me anything about that. I did not know that you knew that they were in existence.

Q. Do you remember whether I did or not?

A. No, sir.

Q. Why were you in doubt as to whether I knew they existed?

A. Simply the fact that I knew Mrs. Patten was very reticent about her affairs. I did not suppose she had said anything to anybody about it.

Q. Did you think she was more communicative with you than with me?

A. I do not know. I knew the facts as they existed because I made them, and I supposed she would say nothing to anybody else and there the matter would end.

Q. That was reasoning on your part?

A. You certainly did not ask me in that conversation about the existence of that $45,000 matter.

Q. You are satisfied of that?

A. I will swear to it.

Q. And you did not say there were any such notes?

A. No, sir; there was no conversation on that subject.

201 Q. Do you remember where that drive started from—where we had been?

A. The drive commenced at the house and ended at Oak Hill cemetary.

Q. Then we came back to the house?

A. Yes, sir.

Q. That was not very far; the drive perhaps then consumed half an hour?

A. Yes, sir.

Q. Do you remember what else was said during that conversation?

A. I remember that you referred to the future of these young ladies and felt sorry they were left alone, and you told me the details of your trip up to Maine and back and a number of things were said.

Q. Was that when we went to see about the family tomb?

A. Yes, sir; about the tomb.

Q. Was anything else said on what might be called business matters at that time?

A. I remember nothing else.

Q. Now this $45,000 check, Mr. Beall, which Mrs. Patten gave you, I suppose you have not that check?

A. No, sir.

Q. Have you seen it since it was given?

A. I have no recollection of seeing it since it was given.

Q. Do you recollect on what bank it was drawn?

A. Riggs and Company.

202 Q. Was it signed as guardian?

A. It was not.

Q. You are sure it was not?

A. Yes, sir.

Q. An individual check of Mrs. Patten on her individual fund?

A. Her individual check.

Q. Did you ever see any property invested in Mrs. Patten's name as guardian?

A. I never have.

Q. Either before or after her death?

A. No, sir.

Q. Now, the date of this check, can you state that?

A. I cannot; it must have been somewhere around Oct. 15th, 1887, but she, I think, gave me the money in advance of the preparations of the papers; she usually did in such transactions.

Q. Was the check given prior to the deposit of the stock with Snyder?

A. Yes, sir.

Q. Did you have the money and the collateral at the same time?

A. I had the money and the collateral at the same time.

Q. You never told Mrs. Glover anything about these $45,000 notes?

A. Not that I can recollect.

Q. We brought a bill of discovery against you, did we not?

A. Yes, sir.

203 Q. You employed Mr. Davis as your attorney?

A. I do not remember employing Mr. Davis as my attorney; Mr. Davis answered for the others and kindly volunteered to answer for me.

Q. But the others were not a party to the action when Mr. Davis appeared for you; the first action, you remember, the young ladies were not parties at first.

A. Yes; but it was their money, and there was every reason why I should not be put to any expense in the matter.

Q. You were not put to any expense?

A. Not that I remember.

Q. Are you not quite sure that you did not pay Mr. Davis any fee for that?

A. I did not pay Mr. Davis any fee; he did not charge anything.

Q. You refused to answer, *do* you not?

A. That may have been the case; you mean at the time for answering that.

Q. No; I mean instead of answering and stating the facts asked for by the bill of discovery, that you, as lawyers say, demurred to the bill.

A. I believe I did do that.

Q. Why didn't you answer, you knew the facts?

Mr. DAVIS: I object on the same grounds as before, that the inquiry is irrelevant, immaterial, and not responsive to the direct examination, and, further, because the record in the cause re-
204 ferred to will show for itself the attitude and action of the witness.

Mr. GLOVER: It won't show why.

Mr. DAVIS: I know.

Mr. GLOVER: The question is why.

A. My reason for not desiring to answer was that I was very much

annoyed by that action—that bill of discovery; it annoyed me personally; it tied up property that was valuable and I could not use the money, and because I was personally interested in deferring action on that matter as long as I could for fear the Brick Machine Company, which was unfriendly to me, might have stopped the dividends on the stock.

Q. Now, Mr. Beall, are you not aware that that answer does not apply to the first proceeding? The first proceeding, was it not a simple bill of discovery, which did not tie up your stock at all? Simply questioning you as to your knowledge, that is what you demurred to?

A. Yes, sir.

Q. It was only after, by second proceeding, that an equitable action was taken which tied up your stock. Now, in regard to the first bill, it simply asked for information which didn't attack your stock at all or attack the note. Why was it you demurred to the bill instead of answering and giving the information?

Mr. DAVIS: Same objection.

A. I will answer that question by stating that Mr. Snyder from the very incipiency of that action in that matter took the
205 ground that I could not attach that stock or have access to it in any way, shape, or form. I tendered money and might have made arrangements with the holders of the notes at any time to take the stock and pay the money, but Mr. Snyder would not consent, pending this matter, that I should in any way attach that stock.

Q. Then why did you demur, which delayed the end of the proceeding, rather than answer, which would have hastened the end?

Mr. DAVIS: Same objection.

A. Simply I desired to delay as far as I could these proceedings because I thought it was a personal persecution.

Q. Did you also think Mrs. Glover would be removed as executrix?

Mr. DAVIS: Same objection.

A. (The WITNESS): Do you mean to ask, was that the reason why I delayed my answer, hoping she would be removed as executrix?

Mr. GLOVER: Yes.

A. No; I had no personal desire or wish to have her removed.

Q. Did you know an application was pending?

Mr. DAVIS: Same objection.

A. I do not know whether I did or not. I may have known it and may not. I was looking out for my own hide.

Q. And incidentally for the welfare of the young ladies. You have been quite a partisan of theirs, have you not?

A. I will not say that. I have tried to be fair.

206 Q. Do you remember just before the bill of discovery was filed Mr. Washington came to you for information about these notes?

A. I remember that.

Q. And do you remember starting to produce the papers and somebody saying, "Are you aware that you are doing this for Mrs. and Mr. Glover?" and you saying you would not do it for Mrs. and Mr. Glover, that you would not give them the information?

Mr. DAVIS: Same objection.

A. I said to Mr. Washington that if he came to me and wanted me forthwith to go over to Mr. Davidge's office, I would produce my papers and tell my side of the story. I told Mr. Washington I would not do it; that Mr. Glover and Mrs. Glover had filed a bill against me.

Q. Was the bill filed then?

A. I think it was.

Q. I am asking you about before the bill was filed?

A. No; it was after the bill was filed, I think. That is what riled me, and the fact that you had filed that bill and tied up my stock. I did feel personally annoyed. I told Mr. Washington that if Mr. Davidge requested me as a personal favor to himself, being an older gentleman than myself, to come over to his office with my papers and tell my story, I would do so to oblige Mr. Davidge; further, I did not see why I could not tell it right there in the office and not be put to any personal inconvenience.

Q. How did the interview wind up?

207 A. By Mr. Washington making all kinds of threats against me.

Q. Why did he make a threat if you were willing?

A. Well, he did; it made a very bad impression upon me and a very disagreeable one, which I afterwards explained to Mr. Davidge, and then Mr. Davidge, I think, dropped out of the case.

Mr. GLOVER: Never mind the conversation with Davidge; I'm asking you about the interview with Washington.

A. Mr. Washington threatened all kinds of things against me, and said he would tie up my stock and prevent me from using it, and I do not know what he didn't say.

Q. Did he threaten you before you refused?

A. I could not swear to that. He wanted me to do things that I did not think I ought to do.

Q. He wanted you to disclose the facts, did he not?

A. He wanted me to tell the things to him. I was perfectly willing to tell them to Mr. Davidge. He was your attorney.

Q. He came representing Mr. Davidge, didn't he?

A. Yes; but I preferred to tell the story to Mr. Davidge.

Q. Did you ever tell it to Mr. Washington?

A. I do not know whether I did or not.

Q. Don't you know you did not, Mr. Beall?

A. I started to and he stopped me.

Q. Stopped you?

A. Yes, sir; I took the papers out of my safe and I said, "Now, the preliminary part of this matter is to read the papers;"

208 but he said, "Put them up; I will not do that. I will ask Mr. Davidge about it, and I will report to him."

Q. Then you mean to say that Mr. Washington refused to take the disclosure that he came after?

A. I do not know; I cannot give you the details, I only know what he did.

Q. See if I can refresh your recollection. Didn't somebody from the interior of your office, when you were about to disclose, say to you, "Mr. Beall, do you remember that you are giving this information for the benefit of Mr. and Mrs. Glover?" then did you not say you would not give Mr. and Mrs. Glover any information?

Mr. DAVIS: Same objection.

A. I do not remember anything about the young man in the office, but I am frank to tell you that I had in mind just what you say.

Q. Didn't you express it?

Mr. DAVIS: Same objection.

A. I do not know whether I did or not, but knowing that you had taken this unfriendly attitude toward me, I did not see why I should *ex parte* communicate that while the thing was in litigation. I knew it was in litigation and I told Mr. Washington that the proper place to tell the story was in the court.

Q. You refused yourself except in court to give the information?

A. Yes, sir; but I go on further to say that when Mr. Jeremiah Wilson, representing you, came to my office and asked me I told him the whole thing.

209 Q. How long after was that?

A. A short time.

Q. Is it not a fact that you and Wilson were not speaking at that time—that you had a falling out?

A. Not at all; we were on the warmest personal terms.

Q. Now, Mr. Beall, did you answer this bill of discovery? Please bear in mind that there were two; one tied upon the stock; that was the second one; that was after you had read the first and based on your answer to the first bill. Did you answer that bill and give the information until after the proceedings to remove Mrs. Glover had been decided adversely by the Court of Appeals of the District?

A. That I do not know, Mr. Glover.

Q. You were constantly in communication Mr. Davis and the young ladies about this matter and your knowledge of the matter, were you not?

A. I was told sometimes of the moves that were made, but they did not enter into my transaction with it in regard to answering the $45,000 note.

Q. But you put yourself in the hands of their attorney when the bill was filed?

A. Mr. Davis acted as my attorney, as I said before.

Q. And he charged you nothing for his services?

A. No, sir.

Q. Now, Mr. Beall, was not this interview with Mr. Washington prior to the filing of any bill of discovery against you
210 at all?

Mr. DAVIS: Same objection.

A. I think I can swear almost positively that it was after, because that was the whole trouble; that is what riled me and that was why I did not want to give this information—that is, *ex parte*—out of court; that is my reason and only reason.

Q. Well, you had not as yet answered this bill of discovery when you saw Washington?

A. No.

Q. When you did answer it you denied any concealment or any refusal to give information to Mr. and Mrs. Glover, did you not?

Mr. DAVIS: Objected to as before, and I again instruct the witness that he is not required to answer any question which is objected to because it is not responsive to the direct examination.

Mr. GLOVER: I protest against that as an attempt to intimidate and control the witness.

Mr. DAVIS: I again instruct the witness that he need not answer this or any question to which I object on the ground that it is not responsive to the direct examination, subject, of course, to the attitude of the examiner to certify such refusal to the court and be governed by the court's direction.

A. I did.

Q. And yet you have just testified that you refused to give Mr. Washington the information, did you not?

211 A. I agreed to give Mr. Davidge the information and I did give Jeremiah M. Wilson the information. I repeatedly offered Mr. Washington access to all papers in that case and offered to furnish him copies, and the only refusal I made was to talk before him about a matter that I would have to answer about in court. I offered him copies of all the papers, had them in my safe and took them out and handed them to him. He would not accept them.

Q. When was this interview with Mr. Wilson?

A. Just after, I think, just after he was employed by you as your attorney. He came to me as your attorney.

Q. Well, don't you know that was long after you had filed your answer?

Mr. DAVIS: Same objection.

A. I still nevertheless gave him information in the case.

Q. Your answer had given the facts, had it not?

A. Of course. He wanted to know from me personally just the whole history of the facts in my case.

Q. That was after the note had been removed from the safe-deposit box by Miss Patten as collector, was it not?

A. I cannot say.

Q. Mr. Beall, you were a very sick man at on- time, were you not?

Mr. DAVIS: Same objection.

A. Yes, sir.

Q. And you consulted Dr. Salisbury, of New York, about your trouble?

212 A. Yes, sir.

Q. You considered yourself in danger once, didn't you?

A. Yes, sir.

Q. An application to examine you in this case was made, as the lawyers say, *de bene esse*—that is, prior to the trial; you resisted it, did you not?

The WITNESS: Resisted what?

Q. The application to examine you.

Mr. DAVIS: Objected to for the same reasons as before and, further, because the record in the cause will show if it is the fact in relation to that application and the resistance thereto.

Mr. GLOVER: That is merely preliminary.

A. I will say in answer to that question that my trouble——

Mr. GLOVER: I do not want the particulars of that trouble.

The WITNESS: I wish to put myself on record. I simply had a trouble of the lungs which did not affect my general health nor prevent me from going around or anything of that kind; I was not disabled in any way.

Q. Now, the question is when an application was made to examine you about these matters as a witness, did you not resist the application?

Mr. DAVIS: Same objection.

A. I do not remember.

Q. Now, how can you remember what happened three or four years ago in a private interview with Mrs. Patten and not remember what happened within a year?

213 A. Well, I wish you would refresh my memory; probably I can remember it.

Q. I will endeavor to. An affidavit was made that you were in poor health; this case was not set for trial nor the trial near at hand. The application was made to Judge Cox that you be examined in advance of the trial as a witness for Mrs. Glover.

The WITNESS: Because I was in failing health?

Mr. GLOVER (continuing): Yes, because there was some danger that you might not live. The question is whether you did not make an affidavit and employ an attorney to resist the application to examine you?

Mr. DAVIS: Objected to as before and upon the further ground that the proper method of examination of the witness on the point under consideration is to produce before him for his examination such affidavit as he may have made, if any, and not to interrogate him about it in this matter.

Mr. GLOVER: It is merely preliminary.

A. I have no recollection of such an affidavit; I do not know whether I made it or not.

Q. Is your memory bad, as a general thing, Mr. Beall?

A. I cannot remember all the intricate details of things that go over a period of three years

Q. That is only a year ago.

214 A. I cannot remember the details of every conversation that takes place where five or six people are participants in the conversation.

Q. I still ask you, is your memory bad, as a general rule? Are you conscious of having a bad memory?

A. No, sir.

Q. Can you tell anything about such an application having been made?

A. I have an indistinct recollection that my testimony was asked for, but I do not know whether I made an affidavit that I was positively unable to testify.

Q. Did you not make an affidavit that you were in good health; that there was no occasion to examine you on the theory that you were not in good health?

Q. My health was good enough to testify at that time.

Q. The question is whether you made an affidavit to that effect?

A. I have answered by stating that I have no recollection of making an affidavit; *that* if I did make an affidavit, and you say I did, what was it?

Q. I will try to refresh your recollection. Did you not make an affidavit that you were in perfect health, which affidavit you knew was to be filed in court for the purpose of defeating the application to examine you as a witness?

A. I know nothing about such an affidavit, but I can swear that I have been in perfect health for two years.

215 Q. Now, will you please answer the question. I am not asking you about your health; I am asking you whether you made an affidavit in such a proceeding.

A. I have said that I have no recollection of making one.

Q. You do not remember whether you did or not?

A. No; if I did make the affidavit it was true.

Q. If you did make such an affidavit, why did you make it? Why did you object to being examined?

A. I objected as any man would object to the impeachment of his health and to any indication that people thought he was going to die; it is a very sensitive point.

Q. It is all a matter of reasoning with you, then, as to what your reasons might have been for making the affidavit, if you made it, and whether you made it or not you have no recollection?

A. I cannot remember every time I make an affidavit, Mr. Glover. These matters were entirely gratuitous; as a witness, I was not interested in this controversy, and I might be called upon to make six or eight affidavits, and I could not remember unless I was personally interested in them.

Q. What property of Mrs. Patten's did you have in your possession at her death?

Mr. DAVIS: Objected to as irrelevant and immaterial and not responsive to the direct examination.

A. I cannot answer that question without referring to a receipt which I have on file at my office, which gives the matter in detail.

216 Q. That receipt is from whom?

Mr. DAVIS: Same objection.

A. From the four young ladies, the four executrices, or from one as collector; in which capacity the receipt was made I do not remember.

Q. Who has the receipt now?

A. I have it in my safe.

Q. That receipt recites everything that was in your possession at her death?

A. Everything in detail.

Q. Well, state from recollection the general nature of that property.

A. There were some real-estate notes.

Q. How many?

Mr. DAVIS: Same objection.

A. I cannot answer that question, Mr. Glover.

Q. Where were all the real-estate notes of the estate?

A. With Riggs & Co., a great many.

Q. And you had a number?

A. I had some; yes.

Q. How did you happen to have a number of the real-estate notes?

A. Because Mrs. Patten had given me the money to invest and I had invested it. I had the notes in my safe waiting for her return from Maine to turn them over. They were bought, as far as my recollection will serve me, with money left in my hands and

217 sent to me or turned over by Mr. Snyder to me by her instructions after she had left the city.

Q. It was, then, simply to secure his going out of an unfinished individual transaction which you had had no opportunity to turn over, was that it?

Mr. DAVIS: Same objection.

A. I will say in detail that when Mrs. Patten left she sold certain United States bonds—I think they were the last she had—and that money was left partly in my hands and partly in a separate envelope addressed to herself, I think, which she stopped at the safe deposit on her way to the train, or which I stopped and delivered there at her request with Mr. Snyder, subject to her order, and while away in Maine I corresponded with her about certain notes and she wrote an order on Mr. Snyder to hand me that envelope

containing that money or those bonds, and I applied those bonds and applied the proceeds to the purchase of those notes which I had in my safe when she died.

Q. Do you remember what notes they were?

Mr. DAVIS: Same objection.

A. They were notes—the receipt will show for itself. I prefer not to state these things upon memory.

Q. But I have not the receipt, you know, and I must insist on your giving me what recollection you have about it.

A. I will telephone to my office and get them.

Mr. GLOVER: I wish you would.

218 Q. In this conversation in the buggy on the drive from the house to the cemetery——

The WITNESS: It was in a landeau.

Mr. GLOVER: On that drive from the house to the cemetery was anything said about the debts of the estate?

Mr. DAVIS: Same objection.

A. I do not remember anything being said about any debts of the estate. I did not know that there were any debts of the estate.

Q. You did not know then?

A. The only thing that I did know of was the mere fact that Mrs. Patten had said to me that she owed Riggs & Co. a little money.

Q. Do you remember stating to me that there was no debt at that time outside of the Riggs & Co. debt?

Mr. DAVIS: Same objection.

A. I do not know whether I did or not. I do not remember any conversation on that subject.

Q. Do you remember, Mr. Beall, procuring from Riggs & Co. the money to pay for the private cars which carried Mrs. Patten's remains from Vermont to Washington?

Mr. DAVIS: Same objection.

Mr. GLOVER (continuing): Do you remember receiving a telegram from me?

A. I remember receiving a telegram from you. I have it now. I am under the impression that I advanced that money.

219 Q. Yourself?

A. Yes, sir; I have no recollection of getting it from Riggs & Co. I think I went up to Riggs & Co. and gave them this information; it was the first intimation I had of Mrs. Patten's death. I went up and informed them, and my impression is that I sent the money.

Q. Was it repaid to you?

A. I think I charged it up in the rent.

Q. Against all the parties?

A. I think so.

Q. Are you not mistaken about that? Was it not furnished by Riggs & Co. and charged against Mrs. Patten's account?

A. No, sir; and I will also state that I sent money to Miss Josephine Patten, at her request, at Portland, in reply to a telegram. She telegraphed me to send her money, and that I always thought it peculiar that she did not tell me that her mother was dead. I did not know anything about her death until you telegraphed me.

Q. I think her mother was not dead when she telegraphed you, but it does not matter. How much money did you send her?

Mr. DAVIS: Same objection.

A. I think six or seven hundred dollars.

Q. And did you charge that against the Misses Patten's share of the rent also or the whole—you were collecting the whole at that time?

A. Yes, sir; my accounts will show, but I am very positive that Riggs & Co. did not advance any money.

220 Q. Are you satisfied also that they did not afterwards reimburse you. I ask it because I have seen a charge at Riggs & Co. against the estate, if I am not mistaken, for that $263?

A. I may be mistaken but I feel very confident, and I can furnish, if you will permit me, a copy of my statement on my ledger which will show it and can be appended to this evidence if you want to know definitely and positively about it.

Q. I have no objection but I presume it will come out what the fact was. Do you remember shortly before the filing of this bill of discovery of having a conversation with a young man who came from Mr. Davidge's office, in which you told him that this $45,000 note was collateral to some notes that Mrs. Patten purchased at your instance from Gardiner Hubbard?

A. I never said any*thing* such thing as that. I could not have said it because such was not the case.

Q. There was no connection between any notes of Gardiner Hubbard's—of any notes held by him then and this $45,000?

A. None whatever. All the notes that Gardiner Hubbard had and sold to the estate were sold direct and I got my commission on the same.

Q. Mrs. Patten bought at your instance some notes from him, did she not?

A. Yes, sir.

221 Q. Were you consulted by Mr. Davis or the Misses Patten or any one representing them on an application that was made to Mr. Davis of a copy which he had of the deed of trust securing the $45,000 note on the stock?

A. I have no recollection on the subject.

Q. Did you know of Mr. Davis having such a copy?

A. I do not remember. I may have furnished Mr. Davis a copy of the deed of trust. It was a very natural thing to do, as he was making my answer in the case.

Q. This was before the bill of discovery was filed?

A. Oh, I cannot remember.

Q. Now, did you say this to that young man, "That you had bought some property of Gardiner Hubbard, the notes on which fell

due, and that Mrs. Patten in some way had previously acquired the notes, or then acquired the notes; that you had asked her to renew that and that she had extended the time"? I will say now that the notes were on your own property; that Mrs. Patten had acquired them there before you knew it or at your instance, and you had asked her to extend the time on the notes, and that you would give her this stock as additional security. Do you remember any such conversation?

A. No such conversation took place.

Q. Was that the fact?

A. No, sir; it was not the fact. I bought property of Gardiner Hubbard just as Mrs. Patten or everybody else did, and I gave him so much cash and gave him my deferred notes. Mr. Hub-
222 bard sold all of that paper to Mrs. Patten, or nearly all of it, and my notes were in with the rest, and when they came due I was desirous of renewal and it was given. They have been renewed from time to time and are now in existence, except the first, which I think I paid—the first year's note. The two and three years' notes on some of the lots are still outstanding.

Q. Can you give the date of this conversation with Mr. Washington?

Mr. DAVIS: Same objection as before.

A. I could not locate it within a year.

Q. Could you locate it within five years? We may get on by degrees.

Mr. DAVIS: Same objection.

A. Well, it was some time within six months from the filing of the bill, I presume.

Q. Before or after?

A. After the filing of the bill.

Q. You are positive about that?

A. Yes, sir.

Q. Are you just as positive about that as you are about the other things you have stated today—that is, that it was after the filing of the bill?

A. I never knew anything of this matter until after I was notified to answer in court.

Q. Anything about what matter?

A. About this bill of discovery. You did not come to me
223 and ask me for any information.

Q. I asked you for information that I did not get about that list of notes. Just answer the questions. What is your degree of positiveness that this conversation with Washington was after the filing of the bill. You have stated that the reason why you did not tell me was that you were annoyed because legal action taken by Mrs. Glover and myself had tied up your stock. Now the point I make is, and I propose to prove it by you, that that explanation is not true, because no such proceedings had been taken at the time. That is a fair statement to you of the gist of the inquiry,

and on the heels of that I ask you, are you positive, at the time of this conversation with Mr. Washington, that any bill had been filed against you at all, of any kind, nature, or description?

A. I will state that I feel positively certain that it was after the filing of the bill, but I may be mistaken. If I am mistaken Mr. Washington, when he came to my office, threatened to file the bill, and that made me just as mad as though the bill had been filed. If I know a man is going to sue me and comes to know my side of the story and tells me he is going to sue me, I won't tell him that. I am too shrewd for that.

Q. You are a very shrewd man, are you not, Mr. Beall?

A. Well, I know when to commit and not to commit myself.

Q. And this was an occasion when not to commit yourself?

224 A. I was made the innocent mark of a cross-fight between two people or between two sets of people. I suffered great pecuniary loss by it.

Q. Of what nature?

A. By not being able to use that money.

Q. There was no such bill on file at that time. The question I now want to ask you as a shrewd man is, did Mr. Washington threaten you before you refused?

A. He informed me that you were going to file a bill against me.

Q. If you didn't disclose?

A. No, sir; he said he was going to do it anyway.

Q. Whether you disclosed or not?

A. Yes, sir.

Q. How old is Mr. Washington?

A. I do not know anything about it.

Q. He is a middle-aged man, is he not?

A. I think so.

Q. He practices law?

A. I do not know whether he practices law or not.

Q. And you mean to say he threatened you before you refused and you refused because he threatened?

A. I offered to show him the papers in the case and to give him copies of the papers.

Q. But you didn't tell him anything about it while he was there?

A. He said you were going to file a bill of discovery, and

225 then I said I would give my information to the court, and I think it is a very proper ground to take.

Q. But you said just now that he had filed the bill. Which of the two are we to understand?

A. I thought he had.

Q. If he had filed the bill, then your last statement that your action was dictated by his threatening to file the bill is not true, is it?

A. I say it was one thing or the other.

Q. And you do not know which?

A. I do not know which it was.

Q. But prompted by some reprehensible conduct on his part?

A. No; I did not say his conduct was reprehensible.

Q. Some provoking conduct on his part. You refused to give the information?

A. Yes, sir. I wish to say there I did not refuse to give anything. He asked me if I would positively refuse, and I said, do not refuse; here are the papers, and I will give you access to them or I will give you copies of them.

Q. Then, why didn't he take them?

A. He said he did not want them.

Q. Then, you mean to say he came to you for information, and when you offered it he refused to accept it?

A. He refused to accept copies of the papers. I took them out of my safe, I undid the bundle, and I offered them to him. He would neither read them or take copies.

226 Q. Were the papers the extent of his demand for information; didn't he want other facts?

A. I think he did want to know all of the details.

Q. And that you refused?

A. I refused upon the grounds that the matter was going into court, and there was the place to give the details.

Q. Then, why didn't that apply to the papers as well as the details?

A. Simply because papers are matters of record. I don't object to people seeing papers in any matter. I have never declined in any matters that I have business connection with to have anybody see anything they wish to see.

Q. You drew a distinction between showing him the papers and telling the facts which did not rest in written documents, did you?

A. Suppose he had gone on and stated that I had stated certain things, and I said I did not, then there would have been controversies. You would not have done it if you had been in my position.

Q. That is an opinion of yours.

The WITNESS: Well, you are a careful lawyer.

Mr. GLOVER: Thank you, but that is irrelevant. I am trying to get at your explanation of why it was.

A. I have given it as fully as I could, my whole reason.

Q. Your reasons have changed somewhat; I am trying to get at your present reason. I see now for the first time that your position is that you offered him the documents, but refused him

227 any information which did not rest in documentary evidence. Is that correct?

A. Yes; he wanted to know about the transaction. I said, "Here, this money was loaned. Here are the notes. I can give you copies of the notes and deed of trust which describes the security." That was not concealing any facts at all.

Q. Now, Mrs. Glover was a distributee of this estate, was she not?

A. I do not know whether she was executrix then or whether Miss Josephine was collector.

Q. I said distributee.

The WITNESS: Do you mean distributee as an heir?

Mr. GLOVER: I mean interested in the estate, having a property interest in the estate.

A. I knew she was an heir.

Q. And you knew she had the same interest in questions touching the estate; you knew she had the same interest in the estate that the young ladies had, didn't you?

A. Yes, sir.

Q. Equal interest?

A. Yes, sir; but I knew this property was not the property of the estate, that it had been so declared to be the property of the four young ladies, so I did not see why I should give anybody else information about their business.

Q. I am asking you now about the list of notes. You interrupted me before I completed the question. Why should
228 you furnish that list of notes to one heir who was interested and refuse it to another heir who was interested in the same degree?

A. Because I was agent then of five people and four of those people were in litigation or dispute with the other one. I, as agent, did not care to take any responsibility for making any communication between two warring factions without legal advice and without the consent of the majority.

Q. Then why didn't you refuse to give the information to the Misses Patten as well as to Mrs. Glover?

A. Because there were four on one side as against the other.

Q. Then it was a mere question of arithmetic with you, was it not? Didn't you think Mrs. Glover had a moral right — have it as well as they?

A. I never questioned Mrs. Glover's right.

Q. Why didn't you furnish the list, then?

A. Because I had no right.

Q. Why not as much as to the others?

A. I simply wanted to ask for legal instruction. I got the legal instruction, and it is my impression that the list was sent. If it did not reach Mrs. Glover it was a mistake of the messenger.

Q. From whom did you get legal instruction?

A. From Senator Stewart.

Q. He was the attorney of the four young ladies. Why did you not take disinterested legal advice?

229 A. He instructed us to do what you wanted. I should not think I could get any better disinterested legal advice than that, Mr. Glover.

Q. Is that the only answer you can give to that question?

A. That was my reason.

Q. Did you know before you asked him what advice he was going to give you?

A. I did not know, but I presumed he would, because I thought it was a fair thing to do. I was very certain that he was a fair man and would do what was right.

Q. You have just testified that you could not swear that you sent that list at all.

A. I cannot swear positively that I did.

Q. Your idea of holding an impartial position between war-ing

factions is to take the advice of the legal adviser of one of the warring factions, is it not?

A. I have no explanation to make.

Q. Would you remember the demurrer that you filed, if it were read to you, in the discovery case, the first discovery case?

A. If I signed it I read it.

Q. I say would you remember it now if it were read to you?

A. I might and I might not. I cannot tell.

Q. Let me read this to you:

"Filed June 4th, 1889.

In the Supreme Court of the District of Columbia

230 AUGUSTA P. GLOVER, Complainant, *vs.* JOHN E. BEALL *et al.*, Defendants. } In Equity. No. 11742.

The Demurrer of the Defendant John E. Beall to the Bill of Complaint of Augusta P. Glover.

The said defendant, by protestation, not confessing or acknowledging all or any of the matters and things in the said complainant's bill — be true in such manner and form as the same are therein at large set forth and alleged, demurs thereto, and for cause of demurrer shows that it appears by the said bill that Mary Patten, Josephine Patten, Edith Patten, Helen Patten, and Benjamin Snyder, therein named, are necessary parties to the said bill, inasmuch as it is therein stated that the said Mary, Josephine, Edith, and Helen are executrices with the said complainant of the certain estate therein mentioned, and they have on the face of the said bill the same rights and duties with the complainant in the premises, and the said Snyder, as trustee, in respect to the alleged indebtedness in the said bill mentioned, is shown by the same to have been party to the transaction out of which, as is alleged, the said alleged indebtedness arose, and by which it is evident that the said complainant has not made the said several parties or any of them parties to the said bill.

And for further cause of demurrer the defendant shows that the complainant has not in or by her said bill made or stated such a case as does or ought to entitle her to any such discovery as
231 is thereby sought and prayed for from or against this defendant; wherefore this defendant prays the judgment of the court whether he shall be compelled to make any further or other answer to the said bill or to any of the matters or things therein contained, and that he may be hence dismissed with his costs.

JOHN E. BEALL,
HENRY E. DAVIS,
Solicitor for Def't.

DISTRICT OF COLUMBIA, *ss*:

I, John E. Beall, being first duly sworn, depose and say that the foregoing demurrer is not interposed for delay.

JOHN E. BEALL.

Subscribed and sworn to before me this 4th day of June, A. D. 1889.

GEORGE E. FLEMMING,
Notary Public."

Did you swear to such a paper as that?

A. I did.

Q. That paper says that you do not think the complainant is entitled to any further information from you, does it not?

Mr. DAVIS: Objected to as not stating the contents of the paper, which speaks for itself.

A. I did not think that Mrs. Glover had any right, and never have thought that she had any right to know about the pri-
232 vate transactions between myself and the four young ladies.

Q. That is not answering the question.

A. I think it is. You asked me if I swore to a paper which disclaims that Mrs. Glover has any right to such information.

Q. Very good, and that is your understanding of its contents, that it is an affidavit on your part that you did not think on the law that she was entitled to the discovery, to information as to these facts?

A. I had not thought about the law, as I do not pretend to pass upon the legal rights of Mrs. Glover.

Q. Well, that did pass on the legal question.

A. That is my opinion there. I swore to an affidavit to a demurrer which I think is right. The demurrer itself shows that I considered just what the demurrer says.

Q. So I understand. Now, why did you desire to interpose obstacles to the acquiring of the information which Mrs. Glover sought by that bill?

Mr. DAVIS: Objected to on the same ground as before.

A. I have explained the reasons all the way through in my testimony.

Q. I do not think you have, and I would like an answer to that question now.

A. Simply because I did not think that Mrs. Glover should sue me to know about a transaction between myself and four
233 other parties.

Q. Don't you think she had a right to find out by information derived from you, if you knew, whether the estate and *and* she as a distributee did as a matter of fact have an interest?

Mr. DAVIS: Same objection.

A. Mrs. Glover by her action questioned the word of the four

young ladies and myself, that that money was not a part of the estate; therefore I thought that the action was justifiable.

Q. Had the word of yourself or of the four young ladies ever been given to her on that subject; if so, when?

Mr. DAVIS: Same objection.

A. If it was not given it would have been given by me if I had been asked, and I think that you asked at the safe-deposit company in that way.

Q. Did I get any information there?

A. If you had asked me on that subject, if Mrs. Glover had any interest in the $45,000, I would have told you "no."

Q. Had you not then refused to give me the list of notes?

A. I had not refused; I said I would give it to you later.

Q. Why didn't you give it to me then?

A. I did not have it then.

Q. Why had you not given it to me on the four or five previous occasions?

A. For the same reason as already indicated.

Q. Didn't you tell me at that time that the reason that you had not given it to me was that the young ladies said
234 that I had no business to ask for it? Didn't I say that was a childish reason, and didn't you say yes, you would give it?

Mr. DAVIS: Same objection.

A. I said I would have to have some legal adviser to go behind.

Q. Didn't you, on the other hand, promise to give it, which promise you never kept?

A. I do not know that I positively promised. I told you I would see about it, and if I could get the consent of the attorneys of the young ladies I would do it. I took the pains to get that consent. I was entrenched by having the consent of the parties themselves.

Q. Was not Mrs Glover as entitled to have information about the list of notes belonging to the estate as anybody was unwarranted to refuse it?

A. Why didn't Mrs. Glover, then, go to Riggs' bank and demand them to give it?

Mr. GLOVER: You have just testified that a portion of them were not there.

The WITNESS: But, then, they were put there.

Q. Is that the only reason you can give?

A. That is a very good reason; that is one reason.

Q. Please state the other reason.

A. I have given you the other reason.

Q. Have you anything to add in the way of reasons?

A. No, sir.

235 Q. Did you not know at that time that Mrs. Glover was appointed by the will as executrix?

A. I knew it by hearsay.

Q. Did you have any doubt of it?

A. I did not.

Q. Were you present when the will was read?
A. No, sir.
Q. Had you not seen the will?
A. I saw the envelope.
Q. Didn't you know as a fact that she was appointed as executrix?
A. I saw by the will afterwards. I went in the carriage to file the will.
Q. You knew, then, that she was executrix?
A. I did not know it. You cannot know it until the court opens it, can you?
Q. Didn't you know she was named in the will as executrix?
A. If I read it; yes.
Q. You don't know whether you knew or not?
A. I simply say I do not know when I knew it.
Q. Mr. Beall, is it not a fact, and don't you know it, that your concealment in this matter, your refusal to give that list of notes, your demur- to the bill of discovery, your refusal to give Washington any information, was because you did not want Mrs. Glover to know anything about those notes?
A. That is not the fact. I deny that most positively.
236 Q. What other explanation can you give?
A. That is not the fact.
Q. Did you not also know from communication with the young ladies and their counsel, Mr. Davis, that they were as yet undetermined whether they would claim that note of $45,000 as a payment to them on account of a debt or that it was an advancement to the estate? Is not that an explanation of your evasion and concealment in the matter?
A. I have not concealed anything and I have not evaded anything, but I know nothing about the legal rights of the two people over the $45,000 matter. I repeat what I did say, that I have been made the butt or target between two conflicting interests, greatly to my detriment, and I am desirous to keep out of controversy as far as possible. The relations between Mrs. Glover and myself were broken by you.
Q. On account of your refusal to give information?
A. It makes no difference upon what grounds, Mr. Glover, but they were broken off by you, by your acting in a very offensive manner towards me when I was doing all I could to serve you and be perfectly fair as between both of you.
Q. Now, let me ask you, in the conversation at the foot of the elevator at the Richmond hotel, when you came there with the paper for Mrs. Glover to sign, didn't I say that you could
237 not come there professing to represent Mrs. Glover and asking Mrs. Glover to sign papers, practically acting as spy upon her, when you refused to give her information to which she was entitled about the estate, and is not that why and when and where we fell out?
A. I never acted as a spy for anybody and under any circumstances. I would like to say, if I may be permitted, that I was a fool for acting voluntarily without compensation for people who

didn't appreciate it. Now, what interest was it to me to neglect my business and take time to go up and have Mrs. Glover sign and answer in a case in court involving the distribution of a piece of property I had no interest in?

Q. Mr. Glover, I will ask you to confine yourself to the question. What did I say to you?

A. I do not remember.

Q. Didn't I say that?

A. I do not remember and I do not want to remember.

Q. Which is it—that you do not remember or that you do not want to remember?

A. I do not remember what the conversation was.

Q. Is this paper dated Dec. 29, 1888, and signed Josephine A. Patten, and this paper dated Jan. 10th, 1889, both of which you have just handed me, are they the receipts to which you have heretofore referred?

A. They are.

238 Q. As being receipts by the collector of the Patten estate for property of the estate which happened to be in your hands at the death of Mrs. Patten?

A. They are.

Q. Do those papers show all the property belonging to that estate in your possession or under your control at the death of Mrs. Patten?

A. They do, down to and including several pieces of jewelry.

Q. In which paper is that from which you are reading?

A. I do not quote the language of the receipt; I simply say that this was everything in my possession, down to and including several pieces of jewelry, personal effects which were left in my safe.

Mr. DAVIS: You mean except the jewelry, all these were in your possession at the death of Mrs. Patten?

The WITNESS: I mean that that was everything in my possession belonging to the estate, real, personal, and mixed.

Q. Is there any recited and receipted for in either of these papers which was not it your possession at Mrs. Patten's death?

A. No, sir; I mean that those receipts were for every kind of effect of Mrs. Patten in my possession—real, personal, or mixed—of any name, nature, or description whatever.

Mr. GLOVER: I suppose copies of these will be taken. You are willing to have copies of these made and the originals turned over to the witness.

Mr. DAVIS: Yes.

The same were here handed to the examiner, marked for identification "J. E. B. No. 1" and "J. E. B. No. 2," and are as follows:

239 WASHINGTON, D. C., *December* 29, 1888.

Received of Messrs. Beall, Brown & Co., agents of Mrs. Anastasia

Patten, deceased, the following notes, securities, &c., in their hands at the date of her decease:

Note of Charles J. Ortlip,	$550 00,	due June 1, 1889, secured by deed trust on lots 22 & 23, sq. 5, of Eckington.
" " "	550 00,	due June 1, 1890, do.
" " "	550 00,	" June 1, 1891, do.
" John H. Lane,	800 00,	" June 1, 1889, do. 8, 9 & 19, sq. 9, of Eckington.
" " "	800 00,	due June 1, 1890, do.
" " "	800 00,	" June 1, 1891, do.
" " "	900 00,	" June 1, 1889, do. 13, 14, 20 & 21, sq. 4, of Eckington.
" " "	900 00,	due June 1, 1890, do.
" " "	900 00,	" June 1, 1891, do.
" " "	1,100 00,	" June 1, 1889, do. 1, 2, 3, & 24, sq. 5, of Eckington.
" " "	1,100 00,	" June 1, 1890, do.
" " "	1,100 00,	" June 1, 1891, do.
" " "	1,300 00,	" June 1, 1889, do.
240		1, 2, 3, & 24, sq. 4, of Eckington.
Note of John H. Lane,	1,300 00,	due June 1, 1890, do.
" " "	1,300 00,	due June 1, 1891, do.
	$13,950 00	

Each of the above sets of notes accompanied by abstracts of title and certificate of taxes, receipt of which is hereby acknowledged.

Note of Clara May & W. H. Houghton,	$2,000 00,	due January 6th, 1889, secured by deed trust lot 203, sq. 206, Washington, D. C.
" " " " "	1,000 00,	due April 6, 1889, do.
" " " " "	1,500 00,	" July 6, 1889, do.
	$4,500 00	

accompanied by abstract of title (being a copy), tax bill for 2nd half of 1888, original deed of trust, and fire-insurance policy, and a receipt of Riggs & Co. for a note of $500.00, due Oct. 6–9, 1888, placed with them for collection by said Beall, Brown & Co., which was paid into said bank, being first of above series of notes, all of which is hereby acknowledged as received from said Beall, Brown & Co.

Note of Charles M. Barrick for $3,500 00, due August 1, 1891, secured by deed trust lot 10, bl'k 35, Columbia Heights.

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Note of Charles M. Barrick for				105 00,	due Feb'y 1, 1889,	do.
"	"	"	"	105 00,	" Aug. 1, 1889,	do.
"	"	"	"	105 00,	" Feb'y 1, 1890,	do.
"	"	"	"	105 00,	" Aug. 1, 1890,	do.
"	"	"	"	105 00,	" Feb'y 1, 1891,	do.
"	"	"	"	105 00,	" Aug. 1, 1891,	do.
				$4,139 00		

the last six notes being for interest; also tax certificate, original deed trust, and abstracts of title, receipt of all of which is hereby acknowledged.

A certificate of title to lots in Trinidad on which an $8,000.00 mortgage note of John E. Beall is secured.

A certificate of title to lots in Trinidad, being lots 4, 5, 6, 7, 8, 9, 10, 11, and 12, in block 7, and lots 6, 7, 8, 9, 10, 34, & 35, block 2, for which $9,700.00 of the scrip of the "Trinidad scrip," issued by the Washington Brick Machine Co., was paid by Beall, Brown & Co., and the said lots located by them for her at her direction, which said acts of theirs as her agents are hereby confirmed, and acknowledgement is hereby made of the receipt of 4 pieces of Trinidad scrip, of par value of $50.00 each, numbers 4029, 4030, 4031, & 4032, in full settlement of all liability of Beall, Brown & Co. of their employment to locate lots in "Trinidad." Certificates #329, for 10 shares of the capital stock of the Columbia National bank in the name of Anastasia Patten, is hereby received.

Also received one pearl pin, in shape of animal, with three straight pins, one with large pearl head; others with small
242 pearl heads, with charms studded with sap-hires, emeralds, rubies, and diamonds, turned over to Judge R. B. Clarke by Emeste Ceresto, 423 10th street N. W., with whom they were left by Mrs. Patten for repairs, and by Judge Clarke given to Beall, Brown & Co. for safe keeping.

In acknowledgment of the receipt of all of the above-described notes, certificates, stocks, papers, and jewelry I, Josephine A. Patten, collector of the estate of Anastasia Patten, have set my hand and seal at Washington, D. C., Dec. 29, 1888.

JOSEPHINE A. PATTEN. [SEAL.]

Done in the presence of us, who hereby ratify the acquittances contained in this receipt of the responsibility of Beall, Brown & Co. in the premises.

MARY E. PATTEN.
EDITH PATTEN.
HELEN PATTEN.

1. WASHINGTON, D. C., *January 10th*, 1889.

Received of Beall, Brown & Co., agents of Mrs. Anastasia Patten, deceased, the following notes in their hands at date of her decease:

Note of Nathan L. Chappell,	1,100 00,	due June 1, 1889, secured on lots 18, 19, 22, & 23, bl'k 4,
243		Eckington.
Note of Nathan L. Chappell,	1,100 00,	due June 1, 1890, do.
" " "	1,100 00,	" June 1, 1891, do.
" Retta G. Williamson,	300 00,	" June 14th, 1890, secured on lots 21, 22, 23, & 24, bl'k 23, Eckington.
" " "	170 00,	due June 14, 1890, secured on square 21, Eckington.
" " "	1,310 00,	due July 12, 1890, secured on lot 16, sqr. 5, Eckington.
" " "	1,310 00,	due July 12, 1890, secured on lot 16, sqr. 8.
	$6,390 00	

Received also of said Beall, Brown & Co. their check # 862, on Riggs & Co., for 913.85, being for six months' interest, collected by them on above notes, and $13.950 of Eckington notes turned over to us by them Dec. 29, 1888, being a total of $20,340.00 of notes bought by them on which simi-annual interest is $610.20; also being for $303.65 for 4 semi-annual notes for interest, given by C. A. Lemar, 2 for $60 each and 2 for $90 each, due Oct. 23, 1888, amounting to $300.00, the $3.65 being for additional interest to date of payment.

The above securities turned over, with the abstract of title covering the $8,000 mortgage note given by John E. Beall, cover
244 and is in full settlement of a receipt given by said Beall to Mrs. Patten for $8,000 cash, to be invested in said Trinidad mortgage, and for $10,000 U. S. 4% bonds, left with said Beall by Mrs. Patten and sold by him, and for $10,000 in U. S. 4% bonds, left with B. P. Snyder and turned over to said Beall on Mrs. Patten's order, which were sold by him and invested in these securities.

Witness my hand and seal.

JOSEPHINE A. PATTEN, [SEAL.]
Collector.

Done in our presence and we hereby confirm above.

MARY E. PATTEN.
EDITH A. PATTEN.
HELEN PATTEN.

245 Redirect examination.

By Mr. DAVIS:

Q. On your cross-examination you spoke of a certain $8,000 note

or $8,000 loan made by you from Mrs. Patten. In whose name was that loan made?

A. In the name of Anastasia Patten.

Q. You were asked on cross-examination also something about an application for the taking of your deposition *de bene esse* and your having made an affidavit in relation thereto in the discovery suit. You say, as I understand you, that you have no recollection of that occurrence. I may refresh your recollection. Have you any memory of my coming to you and informing you that in behalf of the Misses Patten I was going to make an application to the court on that subject, and asking you to make an affidavit, and talking to you about your health and your mentioning, among other things, that you had been examined for life insurance and passed?

A. I remember that conversation, but as to the exact fact that I made an actual affidavit or not I do not remember. I expect I did make the affidavit. If I did make it, it shows for itself.

Recross-examination.

By Mr. GLOVER:

Q. Mrs. Patten was also treated by Dr. Salisbury, was she not?

A. Yes, sir.

246 Q. Did she call your attention to Saulisbury as a proper physician to apply to, or did you call hers?

Mr. DAVIS: Objected to as irrelevant and immaterial and not responsive to the direct examination.

A. I called her attention to it.

Q. And you were both patients at the same time, were you not?

A. Yes, sir.

Q. And did the young ladies know that you were both patients?

Mr. DAVIS: Same objection.

A. I think they did.

JOHN E. BEALL.

At this point a recess was taken for fifteen minutes.

Subscribed and sworn to before me this 8th day of June, A. D. 1891.

ALEXANDER H. GALT, *Examiner.*

After recess, session resumed.

Present: The complainants in person and Mr. Davis, their counsel, and Mr. Glover, counsel for the defendants.

Whereupon—

Mr. GLOVER: I suggest that as these ladies are appearing as witnesses in this case, they ought to be separated; I think they would prefer it.

247 Mr. DAVIS: I suggest, in response to the request of counsel for the defendants, that whether to be used as witnesses or

not, the parties present, besides counsel, are all parties to the cause, and as such are privileged to be present as any witness for or against them, and if they desire to have the examinations separately, I yield to their desire in that respect, but shall be governed by their desire entirely.

Whereupon the complainants decide to remain together at the session.

Miss JOSEPHINE A. PATTEN, one of the complainants and a witness in their behalf, was produced.

Mr. GLOVER: And before she is sworn, I object on the ground that she, being a party in interest, is not a competent witness for any purpose.

Thereupon the witness was duly sworn and deposed as follows:

By Mr. DAVIS:

Q. You are one of the complainants in this cause, Miss Patten, are you not?

A. Yes, sir.

Q. Do you remember the date of your father's death?

A. The 16th day of Nov., 1872.

Q. Where were you living at the time of his death?

A. In Nevada, with the family.

Q. Where do you now reside?

A. Washington, D. C.

248 Q. How long have you resided in Washington?

A. Since Dec., 1884.

Q. In the interval between your father's death, in 1872, and Dec., 1884, where was your mother with her family?

Mr. GLOVER: I object to that as irrelevant.

A. Part of the time in San Francisco and part of the time in Europe.

Q. When did your mother go to Europe, if you remember?

A. The first time to reside permanently in 1876.

Mr. DAVIS: The last time.

The WITNESS: In Oct., 1876.

Mr. GLOVER: Same objection.

Q. When did she return?

A. She stayed over a year, I think; she returned probably in 1877 or 1878.

Q. And how long did she remain in this country at that time?

A. Between 1876 and 1880 she made two or three trips to Europe and back, and from 1880 she permanently resided in Europe until 1884.

Q. When, if at all, did you first become aware of the fact that you had any interest in an estate left by your father?

Mr. GLOVER: I object to the testimony about the travels of Mrs. Patten and her absence from the country on the ground that it is

not admissible under the pleadings, all of it. I object to the question as immaterial.

A. I first learned of it through a teacher, within a year or
249 two of my father's death.

Mr. GLOVER: Same objection. I further desire to have it understood that my objections apply to all irrelevant testimony without interrupting from time to time.

Mr. DAVIS: Certainly. That will be understood. I prefer it.

Mr. GLOVER: All objections are supposed to be taken for irrelevancy without making them special.

Q. Do you know who was your guardian after your father's death?

Mr. GLOVER: I object to that. Only the record can show that.

A. My mother.

Q. And did you or not ever have any settlement with your mother on account of your interest in your father's estate?

Mr. GLOVER: I object to that on the ground that the statute expressly says that the witness shall not testify to any transaction with the deceased, she being a party in interest and a party to the record.

A. Yes; in Sept., 1885.

Q. Where was that?

A. In Warrenton, Va.

Q. Prior to that time and during your residence in Europe was anything done towards adjusting the accounts between your mother as guardian and yourself and sisters as wards?

250 Mr. GLOVER: Same objection.

A. No.

Q. What knowledge have you of the adjustment which you say was had in Warrenton, Va., in 1885?

Mr. GLOVER: Same objection.

The WITNESS: You mean for me to say what happened then?

Mr. DAVIS: Just tell all you know.

The WITNESS: Mamma had gone frequently up to Washington to see Judge Hillyer on business. She told us it was to dismiss the bondsmen on her guardianship bond, I think it was, and when she came back one day she said Judge Hillyer and herself had gone very carefully over the estate, and they arrived at certain settlements, and she had some papers and one paper drawn up by Judge Hillyer, wherein it stated that for the sum of $101,600 we would discharge mother as guardian, and we would accept that in payment of all claims against my father's estate, each of us.

Mr. GLOVER: I object to that because it is straight in the teeth of the statute, as every one understands, and because it purports to give the contents of a written instrument, which is incompetent,

and because it purports to give the declarations of Mrs. Patten, which are incompetent, and because these declarations are subsequent to the date of the will, which is not admissible.

251 The WITNESS (continuing): And then mamma told us that this settlement had been gotten up by herself and Judge Hillyer, and she showed us various papers with figures on them; told us we were to decide, and asked us if we didn't think it was all right that we should get a lawyer and she would pay all expenses, and she then left the room, as she said, not to influence anybody. I didn't read the paper, but Mrs. Glover read it aloud to us, and, after having read to us three or four times, she then went over near the window and read it alone to herself and came back and wrote on the top of the third page, I think, the word "signed" in her own handwriting, and then, as far as I remember, she signed it, and we signed it afterwards.

Mr. GLOVER: Same objection.

Q. Would you know that paper if you should see it?
A. Yes, indeed.
Q. Look at the paper now shown you, please (handing witness Complainants' Exhibit No. 5), and state if you recognize that.
A. (After examining.) That is the one. I see Mamie signed first; I thought Augusta signed first; it is the same paper, written in Judge Hillyer's handwriting, I think.
Q. Look at the word "signed" on the top of the last page.
A. That word "signed" was written by Mrs. Glover.
Q. When?
A. The day that we all signed that paper, in September, 1885, in Warrenton, Va.

252 Q. Now, with reference to the preparation of this paper, I understand you to say that your mother told you that the paper had been prepared by Judge Hillyer after conference with her?

Mr. GLOVER: Same objection to questions as to interviews between the witness and Mrs. Patten.

A. Yes.
Q. Besides this paper what, if any, papers were shown you at the time with reference to the state of your mother's accounts?
A. Several papers figured out in Judge Hillyer's handwriting.
Q. Showing what?
A. Showing the state of the estate and what was duly and justly coming to us.
Q. This paper that I have just shown you recites, among other things, that your mother and guardian had submitted to you for inspection all accounts and papers in her possession touching or relating to the receipts or disbursements entering into such accounting, and that you also have personally general knowledge concerning the family expenses during the said peried. What do you say as to that recital?

A. We all had a general knowledge of all the expenses, and we could look at mamma's check book and see any papers we desired to, and at the time mamma showed us these papers that I have given you she told us she would take everything that was uncertain for her portion.

253 Q. What, if anything, was said as to the manner of the discharge of her obligation to you? You say your mother said she would take everything that was uncertain. What do you mean by that?

A. At that time she thought of giving us Government bonds.

Q. Well, after this paper was signed what was done with it?

A. I think it was put in the safe-deposit box.

Q. No, but immediately at Warrenton; to whom was it given?

A. It was returned to mamma.

Q. Do you recognize these signatures (handing witness the same papers)?

A. I do.

Q. Whose signatures are they?

A. The first signature is Mary Ellen Patten, the second one is Mrs. Glover, the third one is mine, and the fourth is Edith's.

Q. You know these signatures to be correct, do you?

A. I do.

Q. The paper was given to your mother and then what was done with it?

A. I think it was put in the safe-deposit box by her.

Q. When did you return from Warrenton?

A. In December, 1885.

Q. And when did you move into the residence afterwards occupied by your mother?

A. In December, 1885.

Q. Your sister, Mrs. Glover, at that time was unmarried,

254 was she not?

A. She was.

Q. When was she married, if you remember?

A. I think it was in 1877.

Mr. DAVIS: 1887, you mean?

A. Yes, sir. February, 1887.

Q. Do you know of your own knowledge whether or not your mother ever made any payment to Mrs. Glover on account of her indebtedness as guardian of Mrs. Glover?

A. She did three or four days prior to her marriage.

Q. What knowledge have you of that yourself?

A. Mama asked me one day to go down to the safe-deposit box——

Mr. GLOVER: I object to this testimony as to the conversations between the complainants and Mrs. Patten as inadmissible.

The WITNESS (continuing): No; she asked me to go down to the Treasury with her, as she said she wanted to give Gussy her bonds before she asked her for them.

Mr. DAVIS: By "Gussy" who do you mean?

The WITNESS: I mean Mrs. Glover. She said she wanted to give

Gussy her bonds before she asked her for it, and she asked me to go down to the Treasury with her, and as we were going down she asked me if I knew how much it was, and I counted up and said I thought $80,000, and mama said, "They tell me at the bank it is $79,000," and then I said, "Well, mama, it is a little over
255 $100,000, so I think you had better make it a round $80,000," and mama said, "All right;" and we went into the Treasury. Mama had two fifty-thousand-dollar bonds, I think, and out of the two fifties she got five twenties, four of which she put in an envelope and the other twenty she put in a different envelope, and then we returned home.

Q. When you say you figured it at $80,000 what do you mean?

A. I figured out what was the settlement.

Q. Why did you pitch upon $80,000?

A. Because $79,000 was too little, and I thought and I told mama it would be well to give a round number.

Q. What I want to get at is what standard had you to go by, for instance.

A. I knew the quotations of the bonds.

Q. Do you remember what it was?

A. 128, I think.

Q. When you were addressed by your mother as to what amount of the bonds was necessary to pay your sister what, if any, calculation did you make?

A. I made a mental calculation.

Q. At what price for the bonds?

A. At about 128.

Q. Well, what was done with the five bonds after they were taken possession of by your mother and you started back home?

256 A. I immediately went upstairs to my room. Mama had the bonds; and in my room I found Mrs. Glover, then Gussy, lying on my bed, and Edith sitting in a chair in the room. I came in the room and Mrs. Glover said, "Where have you been?" I said, "I have been to the Treasury." She said, "What have you been doing?" I said, "Mama went to transfer your bonds to your name." Mrs. Glover then said, "How much?" I said, "Eighty thousand dollars," and Mrs. Glover said, "That is not enough," and I said, "It is too much; if I had not been there, you would only have gotten $79,000. That is what the bank said, and I told mama to make it a round figure," and Gussy said, "I do not see why mama did not make it a round $100,000," and I then said, "You would then have a great deal too much," and "Would it not have been too much?" I said to Gussy, and she said, "Oh, yes; it would have been too much;" and then we all went down to breakfast. It was 12 o'clock, and after breakfast we came upstairs, and mama asked Gussy to come into her room, and she stood in the doorway, when I saw mama hand her an envelope with the bonds in it, and I saw Gussy return them to mama, and she said, "Keep them for me, as you have kept them for me so long."

Q. When did you next see your mother?

A. Then I immediately went into mama's room, and she told me she had given the bonds to Gussy in her father's name.

Mr. GLOVER: Same objection.

257 The WITNESS (continuing): Saying, "I know your Father in heaven will see me with pleasure give you this money today."

Q. Where were you when the delivery of the bonds occurred?

A. I was standing across the hall fourteen feet, I suppose; I was standing at the foot of the stairs—second-story flight—and Gussy was almost opposite in the doorway.

Q. With reference to Mrs. Glover's knowledge that she had an interest in her father's estate, do you know anything about that?

Mr. GLOVER: Same objection.

A. Oh, yes; many and many a time Mrs. Glover said to me that when she was married she would ask for her money; that she had a right to it, and she would ask for it.

Q. When did she say that?

A. I cannot tell how many times, but frequently since we have lived in Washington.

Q. Well, with reference to her approaching marriage—just before its occurrence—after her engagement, did she or not say anything about it at that time?

A. I do not know that she said anything more about it than usual, but she said it so often I could not remember.

Q. What, if anything, did your mother say with reference to that matter?

A. She said she was very anxious to transfer Gussy's bonds to her name before she asked her for them; she did not want her to ask her for them.

258 Q. Who accompanied you to the Treasury Department?

A. No one but mama; I accompanied mama.

Q. You have repeated what your mother said at the time of giving the bonds to Mrs. Glover. You say she said something about her father being pleased to see it?

A. Yes; she gave them to her in papa's name because it was from him.

Q. What, if anything, did your mother say as to her own feeling on the subject?

Mr. GLOVER: Same objection.

A. I did not hear her say anything. The only thing she ever said was that she would like to put them in trust, but she could not put them in trust without Gussy's consent, as they were not hers to put.

Q. What, if anything, did your mother say at that time in relation to your sister having returned the bonds to her?

A. She said she felt easier about Mr. Glover, because she did not suppose he could have spoken about money to Gussy, or she would have taken the bonds instead of returning them to mama to keep for her.

Q. Do you know what became of those bonds?

A. They remained with mama until a month after Mrs. Glover's marriage; probably a little more, but anyway until she returned to Saint Louis. She wrote and said that as Mr. Glover had taken a safe-deposit box in St. Louis she thought she——

259 Mr. GLOVER: I object to that letter unless it is produced.

Q. Do you know where that letter is?

A. No.

Q. Have you since your mother's death examined among her effects so as to acquaint yourself with the papers left by her?

A. Yes.

Q. Is that letter among them?

A. No; that letter was given to me to answer.

Q. What about the bonds?

A. Mrs. Glover wrote for them and mama said that as they were hers and not mama's she had nothing to do with them, and they were sent by registered mail.

Q. Who sent them?

A. I think I went down to F street, branch office, and sent them by registered mail to St. Louis.

Q. Who wrote the letter of transmission?

A. I did.

Q. Where were the bonds at that time?

A. They were in mama's safe-deposit box.

Q. Who got them out of the safe-deposit box?

A. Mama did.

Q. You mailed them yourself?

A. Yes; by registered mail.

Q. Now, did your mother ever pay you or any of your sisters anything on account of this $101,600 mentioned in the paper of
260 Sept., 1885?

Mr. GLOVER: I object to that on all the grounds previously stated and because the witness is incompetent to testify to it, because the pleadings are conclusive on the subject, and because it is immaterial.

A. Yes; in October, September or October, I think.

Q. What year?

A. 1887. I know it was October, anyway—October, 1887. Mama gave the four of us a joint note on Mr. Beall for some stock that she loaned money on, and the entire note was $45,000, of which mama told us each had $11,250, and that she gave it as first payment—part payment for the claims we had against mama on our father's estate. Mama distinctly told us when she gave it to us that she would have given it all to us, only she was looking for some safe investments.

Q. Well, besides that was anything paid you on account of the $101,600?

A. No.

Q. What form did this payment take, you say?

A. It was notes given by Mr. John E. Beall secured by some shares of the brick machine company. I do not remember how many shares.

Q. How was it secured? In what form, I mean. What was the form of the securities?

A. Deed of trust. Mr. Snyder was one of the trustees—Mr. Snyder of the safe-deposit company.

Q. Did you ever see that deed?

261 A. I think I did; yes; I signed it.

Q. Look at the paper now shown you (handing witness Complainants' Exhibit No. 7) and state if you recognize the paper.

A. I do; and that is my signature.

Q. To what do you refer when you say that is your signature?

A. To Josephine Antoinette Patten, on the last page.

Q. In whose handwriting are the other signatures?

A. Mary Ellen Patten, Edith Patten, and Helen Patten.

Q. Do you know the handwriting of your sisters?

A. I do.

Q. And you recognize that to be in their handwriting?

A. I do.

Q. Would you remember the notes, you think, if you saw them?

A. Oh, yes; I would.

Q. Look at these papers now shown you (handing witness Exhibits R. R. P. 1 to 13, inclusive) and state if you recognize them.

A. (Examining.) Yes; these are the ones I signed.

Q. You mean endorsed?

A. Yes; I wrote my name on the back of it.

Q. Now look at the names on the back of that principal note—the names Mary E. Patten, Josephine A. Patten, Edith Patten, and Helen Patten—and also on the backs of the notes Nos. 7, 8,

262 9, 10, 12, and 13, now shown you, and state in whose handwriting those endorsements are.

A. All in the same handwriting as the principal.

Q. And whose handwriting is that?

A. Mary E. Patten, Josephine A. Patten, Edith Patten, and Helen Patten.

Q. Now, you have said that your mother made this payment of $45,000 on account of her indebtedness to you from your father's estate; how do you know that?

A. Because she told me so.

Q. When and where did she tell you?

A. The morning the papers were made out, in her own house, Massachusetts avenue, before Mr. Beall.

Mr. GLOVER: Same objection.

Q. In whose room?

A. In the boudoir.

Q. Who were present?

A. Mr. Beall and the family, I think. I do not know of any one else.

Q. This deed of trust was signed by you, it seems; what, if any, explanation was made to you of the necessity for you to sign it?

A. So we would be able to collect the principal; I think so. I do not remember anything that was said about it.

Q. You remember the fact of having signed it at the time?

A. Yes; I remember also it was made over to us four.

Q. What, if anything, was said at that time about Mrs. Glover having any participation in the notes?

263 A. Mr. Beall asked mama if he should put Mrs. Glover's name in, and mama said, "No; Mrs. Glover has nothing to do with this; she has been paid."

Q. Well, the note was executed and you endorsed it. What did you do with the notes?

A. The principal note was given to Snyder, I think.

Q. Yes; I know, but what was done with the interest notes?

A. Given to Riggs' bank.

Q. All of them?

A. I think so. The interest checks that Mr. Beall made out were made out to mama, and mama made them over to us, divided them into four, and made them over to us individually.

Q. After the notes were put into the bank do you know anything about the manner in which they were paid except what you knew from the bank?

A. No.

Q. Your mother died on September 11th, 1888, did she?

A. Yes.

Q. Where?

A. Portland, Maine.

Q. And how shortly after that did you reach Washington?

A. She died Tuesday and we reached Washington Friday.

Q. When was your mother's will first opened?

A. Some time after we returned. I do not know exactly how long.

Q. Where was the will?

264 A. The will was—I have forgotten now where we found it.

Q. Who were present when it was opened?

A. The five of us; the four of us and Mrs. Glover.

Q. Any one else?

A. No.

Q. What, if anything, at that time was said by Mrs. Glover or any of you about the disposition of your mother's estate as appearing from her will?

Mr. GLOVER: Same objection.

A. Mrs. Glover said—shall I tell the whole conversation?

Mr. DAVIS: Just tell what is relevant to the case; yes; tell the whole conversation.

The WITNESS (continuing): Mrs. Glover read us the will, and she said, "So if any of you die we will get all." I do not know what she meant by that, and then I looked over the will again, and I

said that if any of said children die before this will come into effect the rest will go share and share alike to the survivors, and I said, "It means until the will comes into effect, and it seems to me that the will is in effect now." So Mrs. Glover did not say anything more, and then she afterwards said, "We will leave the estate altogether."

Mr. GLOVER (to Mr. Davis): Is that material?

Mr. DAVIS: It will appear to be.

Mr. GLOVER: I object to it.

The WITNESS (continuing): Mrs. Glover said, "We will leave the estate altogether, and we will divide the income." Where-
265 upon I said, "We will first, Gussy, take out what comes to us from papa's estate so as to equalize it." I then said, "You have your share, have you not?" and she said to me, "Yes; I have."

Q. Well, what, if anything, was said in addition to that at that time?

A. I do not remember anything more that was said.

Q. How long was that before the will was offered for probate?

A. I think it was the same day.

Q. The day you were to come down to court with it?

A. I did not come down; I think Mamie came down with Mr. Beall and Mrs. Glover, and I then asked her, "Have you still got your bonds?" and she answered, "Um;" I said, "Because they are 130 today."

Q. When was it first a question between you and your sisters, your unmarried sisters on the one side and Mrs. Glover on the other, that Mrs. Glover would not recognize that she had got her portion of her father's estate?

A. We arrived in Washington Friday about 1 o'clock, and Friday night Gussy came into my room and said, "We will leave the estate altogether."

Q. Was this before the will was opened?

A. Yes. She said, "We will leave the estate altogether and divide the income," and I said, "Gussy, first we will take out what comes to us from my father; you have yours and that will equalize
266 it," and I turned to her and made the direct question, "You have yours?" and she said, "Yes." That was Friday night. The next morning, Saturday, she came into my room and said the same thing and I repeated the same question and she then again said she had received her share of papa's estate.

Q. Who was present on the first occasion, Friday night?

A. I think Nellie, and she was also present afterwards.

Q. Any one else besides Miss Nellie?

A. I do not know; there may have been; and the same night, Saturday night, she came into my room and we had the same conversation, but when I said to her, "You have received yours," and she said "Yes; but you cannot take it; you have to get somebody to give it to you."

Q. What did she mean by that?

A. I asked her and she said, "Well, you cannot take it." I did not press the subject any further—yes, I did. She said, "You cannot take it," and I said, "Yes, we can, because there is no one to give it to us but ourselves."

Q. My question was this: When did Mrs. Glover first take the position of denying that she had received from her mother on her father's estate her portion?

Mr. GLOVER: You understand that this I do not want to apply to all of this inquiry?

Mr. DAVIS: That is all right.

The WITNESS: Judge Clark came to us and said——

Mr. GLOVER: Don't give us that conversation.

Mr. DAVIS: No; simply answer the question.

267 The WITNESS: Through Judge Clark I first heard positively——

Mr. GLOVER: Of what?

The WITNESS: That Mrs. Glover ever had an intention of claiming the full share of the estate as it was then and not acknowledging that she had received her portion of papa's estate.

(By Mr. DAVIS:)

Q. Was that before or after the will had been filed for probate?

A. It was after.

Q. Was this the subject of conversation or of mention at any interview after the will was filed for probate and before you learned from Judge Clark of Mrs. Glover's disposition?

A. Yes. One day Gussy came into Mamie's room, where Edith was at the time, and said something about the will not being witnessed but by two people, and that would mean the next of kin, and by the next of kin she said the lawyers said you could put in grandchildren, and I at the time did not say anything, but when Mr. Beall came that afternoon I asked him, "What do you think of that?"

Mr. GLOVER: Don't give us——

The WITNESS (continuing): I mentioned it to Mr. Beall and he then said——

Mr. DAVIS: Never mind about that.

The WITNESS: Then from what Mr. Beall told me I then a second time said to Gussy——

268 Mr. DAVIS (to Mr. Glover): She is testifying to what she said to Mrs. Glover.

The WITNESS: After the conversation with Mr. Beall Mrs. Glover suggested grandchildren as next of kin and came in as heirs-at-law, and I told her——

Mr. DAVIS: That is not relevant.

The WITNESS: I told her we had just heard it could not stand in the District; whereupon she told me I had better get a lawyer, and she suggested Senator Stewart.

Q. The conversation I had in mind was not that. Did you have any other conversation in which your sister participated?

A. One night after dinner Mrs. Glover, Judge Clark, Senator Stewart, myself, Nellie, and Mamie were in the library. Mr. Glover was lying at full length on the sofa in the hall and Mrs. Glover——

Q. (Interrupting.) Where was Miss Edith?

A. Upstairs, I think; she was not there. Mr. Stewart then had a conversation with Mrs. Glover about the estate.

Mr. GLOVER: Did you hear that conversation, Miss Patten?

The WITNESS: I did.

Mr. GLOVER: Between Senator Stewart and myself?

The WITNESS: No, sir; you were lying at full length on the sofa in the hall and Judge Stewart was in the library with us; whereupon Senator Stewart said he had read the will and that he
269 thought it was very fair—no, he said it was very easy to distribute, because he said in the will it said there was a great number of Government bonds, and he said there is nothing easier then to divide Government bonds; and then he said, "You inherit them both from your father and mother, and it comes to about the same thing," and I said, "Senator, we will first have to take out from the general estate what comes to us from our father's estate;" and then I said, "Gussy has already gotten hers," and Senator Stewart then said to Gussy, "Is that so, Mrs. Glover? Have you already gotten your share of your father's estate?" and Gussy said, "Yes; I have."

Q. Well, what else was said on the subject at that time?

A. At that time we did not mention that most of the Government bonds had been sold.

Q. Did not mention it to whom?

A. To Senator Stewart, but Judge Clark did. He left with Senator Stewart, and he said to him——

Mr. GLOVER: One moment. I insist on your regarding these objections.

Mr. DAVIS: Do not testify to any statement that was made by any one.

The WITNESS: You asked me how I knew it.

Q. Was any other conversation had or interview in which Mrs. Glover took part and at which you were present in which this subject of her having received her portion of her father's estate was mentioned?

270 A. I think that was all. She left the house a few days afterwards.

Q. I omitted to ask you one thing that occurs to me now. You said that when you were at Warrenton your mother was visiting Washington and interviewing Judge Hillyer with reference to the adjustment of her accounts as guardian for the release of her bondsmen. Was that the first time that you heard your mother speak of the release of her bondsmen and the necessity of settling her accounts?

A. No; I had often heard mama speak of it in Europe, that she

thought it necessary to return to America with us to release her bondsmen on her guardianship bond on the estate of our father.

Q. When did you hear her say that?

A. I heard it continually mentioned from 1880 to 1884, but more particularly just as we were leaving Paris. Mama said, "We must return because those bondsmen have to be discharged; they are getting impatient."

Q. Now, another thing, with reference to any payment to you or any of you on account of what was due from your mother to you as guardian, what, if any, offers to pay did she make besides the payment of the $45,000?

A. She offered me the C. C. Glover building on F street, which Mr. Glover was then willing to sell for about $100,000, and she offered me Dumblane, and one day Mrs. Glover, mama, and I were
271 in the carriage, just after she bought the F-street building, 1216 F street. She then said she was going to build it up and make it worth $101,000 and give it to any one of us who would care to take it.

Q. How long was that after she had bought the building?

A. Oh, it was within a month; she bought the building in May, I think.

Mr. GLOVER: Of what year?

The WITNESS: 1888.

Mr. DAVIS: The year she died?

The WITNESS: The year she died.

Q. You spoke awhile ago of your mother saying something about putting the money belonging to you all in trust; under what circumstances did that conversation occur?

A. One day, I think it was in 1888, Mr. Glover was having a lawsuit with a man by the name of Dark-lantern Dick——

Q. Where was this?

A. I do not know where it was; it was somewhere in the West; and Mr. Glover sent a telegram that was so peculiarly worded that Mrs. Glover thought he had lost the suit and would be obliged to pay $250,000; whereupon she got very excited and said she did not know how they would be able to pay it; that they never had that amount and she did not have half of it; that the law library, or whatever Mr. Glover had, was mortgaged; whereupon mama said that was another instance that convinced her of the wisdom of putting girls' money in trust, because, she said, a man is so very likely to run through it, and mama said, "I have the
272 intention of putting all your money in trust for you," and she said, "Of course, I cannot put your money in trust without your consent," and she said she had *had* spoken of it to Senator Stewart and he told her you could not put a girl's money inherited directly from her father in trust without her consent.

Mr. GLOVER: I object to all of this conversation without Mrs. Glover's presence.

(By Mr. DAVIS:)

Q. Mrs. Glover was present, was she not?

A. Yes; and Mrs. Glover objected to mama putting her money in trust; she said it was very foolish because one was liable to make a good deal of money out of money, and mama said a person was liable to lose more than they made, and Gussy said Mr. Glover had some banks that would pay ten per cent. or 12 per cent., and mama said she would not deal with a bank that paid that.

Cross-examination.

By Mr. GLOVER:

Q. Are you sure, Miss Patten, that Mrs. Glover said the law library was mortgaged?

A. I am positively certain; I would swear to that before anybody.

Q. Did she tell you who had invested?

A. No; she did not tell me that; she said the legal index
273 had been mortgaged.

Q. She did not tell you how much had been realized?

A. No; I did not ask her.

Q. Didn't tell you what class of capitalists had advanced the money?

A. No.

Q. Didn't tell you how long the note ran?

A. Never; she said the legal index was mortgaged.

Q. Did you know what that was?

A. No; a lot of little books with slips of paper pasted through them.

Q. Do you know any of your acquaintances who would take a mortgage of that kind?

A. No.

Q. Was any one present when this declaration was made?

A. Edith and Nellie were present. She positively said the legal index was mortgaged.

Q. And which of your sisters was present at the time?

A. Edith and Nellie; it was in mama's room; it was the day—Sunday—and the occasion was a telegram received from Mr. Glover worded very peculiarly and she thought he had to pay $250,000 damages to a man by the name of Dark-lantern Dick, and she then sent over to Mr. Chandler, who she thought would know something about it, but he knew nothing.

Q. That does not interest me so much; but the index that was mortgaged?

274 A. More than once I heard her mention it.

Q. Apropos of what?

A. I do not remember. I remember knowing for a long time that Mrs. Glover thought or knew that the legal index was mortgaged, and that day she positively said the legal index was mortgaged.

Q. Don't you think you could have misunderstood her?

A. I positively did not misunderstand her, because I thought at the time what a foolish investment.

Q. This $45,000 was paid by Mrs. Patten to Beall by a check on Riggs' bank, was it not?

A. I think, I am almost sure, that mama took out the $45,000 from the bank and paid it to Beall himself.

Q. In person?

A. I think so.

Q. What are your grounds for thinking so?

A. I do not know the whole story, but I think Mr. Beall had some reason for it.

Q. For taking it in cash?

A. Yes.

Q. Could you be mistaken about that?

A. I might be mistaken, but I have a vague recollection of it.

Q. Very vague, is it not?

A. No. I know that Mr. Beall had some reason that he did not want the bank to know too much about it, or something.

Q. When you were appointed collector you got possession
275 of all of Mrs. Patten's private papers and those checks, did you not?

The WITNESS: The Beall checks?

Mr. GLOVER. Of all her checks.

A. Yes; I left them at the bank and never took them out.

(To Mr. Davis;) Did we take them out, Mr. Davis?

Mr. DAVIS: I have no knowledge on the subject.

The WITNESS: I think we did take some of them home for some of my sisters to sign.

Q. Have you not a lot of checks that were paid out of Mrs. Patten's bank account a short time before she died?

The WITNESS: You mean the old checks?

Mr. GLOVER: Yes.

A. Yes; I have them.

Q. Is this $45,000 check among them?

A. I do not know. I have never looked through them.

Q. Did you become aware of a notice given you through Mr. Davis to permit Mrs. Glover to have an inspection of all the private papers of the estate?

A. I do not remember.

Q. What other papers are there besides these old checks?

A. I do not know; lots of things. I have never looked through them very carefully. There are some architects' papers of the tomb out in California.

Q. Anything else?

A. Not that I know of.

Q. These letters passing between Mr. Deal and Mr. Hillyer
276 that have been produced in evidence, did you have the custody of those papers?

A. I did. I found them in a tin box belonging to mama.

Q. Then you had the custody of other papers belonging to Mrs. Patten, did you not; private papers?
A. No.
Q. Nothing besides those?
A. No.
Q. When did you become of age, Miss Patten?
A. In 1884.
Q. The day of the month, please?
A. The 2nd or 4th of July, I do not know which; the 2nd, I think.
Q. When were you born?
A. In 1863, I think; yes.
Q. On the 2nd of July, 1863?
A. The 2nd, I think.
Q. Is that the date named in the will?
A. I do not know. I do not know the date in the will. I know that is my birthday.
Q. When was your sister, Miss Mary, born?
A. I do not know.
Q. You became sixteen years of age on the 2nd day of July, 1876, did you not?
A. I do not know. I told you the day I was born and you can count it up.
Q. Miss Mary became sixteen on the 26th of November, 1875?
277 A. I do not know that either.
Q. Is that her birthday, the 26th of November?
A. It is in November; I think it is the 26th; yes.
Q. Miss Edith became sixteen on the 12th day of June, 1880?
A. The 12th of June is her birthday; yes.
Q. Miss Helen was twenty-one when?
A. The 11th of September.
Q. What year was she twenty-one, do you know?
A. No; I do not know.
Q. Do you remember a bill of discovery filed against Mr. Beall?
A. I think I do.
Q. Did your attorney, Mr. Davis, appear for him?
A. I do not know if he did or not.
Q. Did you pay the attorney's fees, you and your sisters?
A. No; we did not.
Q. Did he pay his own fee?
A. I know nothing at all about his affairs.
Q. Was any bill rendered you by Mr. Davis for that service?
A. No bill was rendered to me by Mr. Davis for that or any other purpose.
Q. Mr. Davis acted as Mr. Beall's attorney, did he not?
A. I know nothing about it.
Q. Did Mr. Beall say to you once that it would be well to get Mrs. Glover to sign a paper agreeing to account for so much money as she had received from the estate?

Mr. DAVIS: Objected to as irrelevant and immaterial and
278 not responsive to the direct examination.

A. Not that I know of.

Q. Did you say to Mrs. Glover that Mr. Beall said all she had to do was to sign a paper agreeing to account for what she had received of the estate?

A. No; I never said that.

Q. At your house some time in the fall of 1888?

A. I never said that in my life at any time.

Q. Do you remember asking me to go to see Senator Stewart about any matter at the time this question of the money was first broached?

A. No; I never asked you to do anything.

Q. You do not remember my going to see Judge Clark at the request of you and your sisters?

A. Judge Clark may have requested you, but we did not.

Q. Do you know anything about it, except perhaps it might have been?

A. No.

Q. You do not remember my going?

A. No.

Q. You don't remember any conversation between Stewart and myself touching this $100,000?

A. Yes; that was the first intimation I had that there would be any trouble.

Q. What do you remember about that?

A. I remember Judge Clark told me——

Mr. DAVIS: Don't say that.

279 Mr. GLOVER: I object to it as irrelevant. I would like to have an answer to the question.

Mr. DAVIS: I object to the question and instruct the witness that she can decline to answer it.

The WITNESS: I decline to answer.

Q. Was the report made to you of the interview between Stewart and myself at the instance of Miss Patten and her sisters?

Mr. DAVIS: I object as before.

The WITNESS: I decline to answer.

Mr. GLOVER: On what grounds?

The WITNESS: Mr. Davis objects.

Mr. GLOVER: That is sufficient, is it?

The WITNESS: Yes, sir.

Q. Did you have any account from Mr. Stewart of the substance of that interview?

Mr. DAVIS: Same objection.

The WITNESS: None.

Mr. GLOVER: You had no account?

The WITNESS: I say I have no answer.

Mr. GLOVER: Why?

The WITNESS: Because Mr. Davis objects.

Q. Did you not, yourself and your sister Mary, in your hearing and to your knowledge ask me to go and see Clark and with him to see Stewart about this matter of the $100,000?

A. No; I never did.

280 Q. Did you have any knowledge of Senator Stewart seeing me with you both and discussing it?

A. Yes; after you left the house.

Q. What was that?

Mr. DAVIS: Is it proposed to show that Senator Stewart reported something to Miss Patten as eminating from Mr. Glover?

Mr. GLOVER: I propose to have an answer to the question.

Mr. DAVIS: I have no objection to the witness answering simply in response to the question, but I object to her making any statement of what Senator Stewart reported Mr. Glover to have said, upon the ground that it would be incompetent and the record has already been sufficiently encumbered by inadmissible and irrelevant testimony.

The WITNESS (to Mr. Davis): Then I am not to say what Senator Stewart said?

Mr. DAVIS: I object to it.

The WITNESS: I decline to answer.

Mr. GLOVER: Because your counsel tells you not to?

The WITNESS: Yes.

Mr. GLOVER: You have no other reason?

The WITNESS: None.

Q. Do you know that at your solicitation I accompanied Clark to see Senator Stewart and that Senator Stewart asked me, as representing you and your sisters, whether there was to be any

281 trouble over this $100,000 matter—whether Mrs. Glover was willing to acknowledge it as an advancement from the estate?

A. Mr. Stewart was never my counsel; he was simply a friend of mine; never my lawyer.

Mr. GLOVER: That is not an answer.

The WITNESS: I knew something about your meeting; I do not know whether you accompanied Clark to see Stewart or Stewart came to see you.

Q. You do not know that we met at Stewart's house?

A. I know you met somewhere.

Q. What was the purport of that interview, if you remember?

Mr. DAVIS: I object on the ground that it is clearly hearsay; the testimony is irrelevant besides; besides which it is not in response to the direct examination.

The WITNESS: If Mr. Davis objects to it I won't answer it.

Q. Are you desirous of concealing any of the matters that transpired at that time?

A. I am not.

Q. Then why not answer these questions if your counsel allows you to do so?

Mr. DAVIS: I object to the witness being interrogated in that manner. I have offered the witness to prove certain facts. I have confined her examination to those facts and the examination was restrained by me within easily visible limits, and, having
282 had one experience in the irrelevant examination of a witness today at very great length, I decline to submit my clients to the expense of paying for testimony of that sort any longer, and I shall object to all questions which I deem to exceed the proper limits of cross-examination and shall advise my clients of their right to refuse to answer them in the expectation that my objections will be availed of.

Mr. GLOVER (to the witness): Now, the answer to that question.

The WITNESS: I do not answer.

Q. Don't you know that this matter was discussed at that time on the theory that it was an advancement from Mrs. Patten's estate?

A. I do not know that. I never heard of it as an advancement.

Q. Don't you know that you sent me to Stewart to find out from Stewart if she would agree?

A. No.

Q. Don't you know that she did agree conditionally to be charged with an advancement from Mrs. Patten's estate?

The WITNESS: Conditional on what?

Mr. GLOVER: Conditioned on this, that it should not be considered as obligatory on her part; simply a matter of concession for family peace.

A. I never heard that before.

Q. That was not reported to you by Senator Stewart as a result of that interview?

283 A. No.

Q. And you did not ask Mrs. Glover to sign a paper agreeing to account?

A. No; I never did.

Q. And you did not say to her that Beall had said that was a good way to adjust the matter?

A. I never did.

Q. You say Senator Stewart was never your counsel?

A. I said he was my friend.

Q. Don't you know that he signed all the papers in the case as attorney?

The WITNESS (to Mr. Davis): Did he?

Mr. DAVIS: Indeed, I do not know.

A. Yes; he did at the commencement about getting the bond.

Q. Mr. Upton was also your attorney, was he not?

A. Well, we never acknowledged him.

Q. Did he act for you?

A. He came with Senator Stewart.

Q. Did he act for you as attorney?

A. Not for me; we never got him.
Q. Did Mr. Stewart engage him?
A. I do not know.
Q. He was present at the opening of the box at the safe-deposit Co., was he not?
A. Yes.
Q. Don't you know that he was there as your attorney?
A. Yes—well, as my attorney; I do not know.
284 Q. You do not know whether he was or not?
A. He was never engaged by any of us.
Q. Don't you know whether he was there as your attorney?
A. Not engaged by any of us.
Q. Was he acting as your attorney?
A. He was there.
Q. Why was he there?
A. I do not know. I suppose Senator Stewart brought him.
Q. Did he not profess there to advise you and act for you in your presence?
A. I do not know.
Q. Did he not sign the amended petition for probate as your attorney?
A. I think he did.
Q. Have you any doubt, then, that he was your attorney?
A. He was never engaged as attorney by any one of us. Senator Stewart brought him.
Q. Did he not come to the house and confer with you about the estate?
A. He came there, brought by Mr. Stewart.
Q. Well, he was your attorney, then, was he not?
A. Not by being engaged by me.
Q. This note for $45,000 was in your mother's possession until she died, was it not?
A. It was in the safe deposit until I took it out.
Q. Did you hear your sister, Miss Mary, interrupt just now?
A. Yes.
285 Q. What did she say?
A. She repeated what I said.
Q. When did you take it out?
A. Before you.
Q. And took it away with you at that time?
A. Yes; and also the interest notes.
Q. Miss Patten, are you afflicted with a bad memory in any respect?
A. I am positively certain I took it away that day.
Q. Is your general memory good?
A. Very.
Q. Have you not, in answer to the bill of discovery, made oath that you took it out after you were appointed collector?
A. No; I do not know; I think I took it out then.
Q. Are you mistaken about that, you think?

A. I may be mistaken, but I know I took it out of the safe-deposit box myself.

Q. That was after you were appointed collector?

A. I am not sure, but I know I took it out myself.

Q. Up to the time you took it out it had been in your mother's possession always, had it not?

A. Always been in that box.

Q. Always been in your mother's possession in that box?

A. Yes.

Q. You had no object in taking it out?

A. No.

286 Q. Some applied to interest notes?

A. Yes.

Q. And after Mrs. Patten's death, when you were appointed collector, is it not your recollection that you withdrew it and deposited it with Riggs & Co.?

A. Yes.

Q. You received a payment of $20,000 on it before it was due, did you not?

A. Yes.

Q. That was deposited to your credit with Riggs & Co.?

A. It was.

Q. Have you any doubt now as to when you withdrew it?

A. I am not certain, but I know I took it out.

Q. Are you in the habit of speaking as positively as that without reflection?

The WITNESS: I ignore the question.

Mr. GLOVER: You cannot ignore it; I would like to have an answer to it.

The WITNESS: I refuse to answer.

Q. Did you not, in the bill of discovery, state as follows: "The said note was not delivered to them (meaning yourself and your three unmarried sisters) when made, but was delivered to the said testatrix (that is, Mrs. Patten) for them, and, as they are informed and believe, the same was left at the office of the defendant The Safe Deposit Company, the defendants Beall and Snyder being present, and the same came into the possession of these de-

287 fendants after the death of said testatrix"? Is that right; did you say that?

A. I believe so; if it is in the bill of discovery, I said it.

Q. Have you any recollection independant of this statement what the fact was?

A. I know it was in the safe-deposit company until mama died.

Q. Do you remember making this statement that I have just read to you?

A. If it is in the bill of discovery, yes.

Q. Do you remember making it?

A. I say if it is there I made it.

Q. I say, do you remember making it?

A. Yes.

Q. It came into your possession as collector, did it not, Miss Patten, this $45,000 note? Did you hear your sister prompt you then?

The WITNESS: She said, "He is speaking to you."

Mr. GLOVER: You heard her requested by the examiner not to interfere, did you not?

The WITNESS: She is not interfering.

Mr. GLOVER: Has she not prompted you during the examination?

The WITNESS: No; they have not.

A. It was in the safe-deposit box.

Q. Well, it came into your possession as collector?

288 A. Either as collector or before; I do not remember, but I know I took it out myself.

Q. Have you not just testified that it did not come into your possession until after the death of Mrs. Patten?

A. Yes.

Q. Was it not in the box when you were appointed collector?

A. That I do not remember.

Q. You do not know whether it was or not?

A. I do not remember that. I know it was in the box when mama died and I took it out.

Q. Why didn't you turn it over to the executrices?

A. Because there were no executrices.

Q. Executrices were subsequently appointed?

A. Ah, because I knew it was mine.

Q. Did you say anything to the other executrix, Mrs. Glover, about its being there and your withdrawing it?

A. No; I did not.

Q. You concealed that, did you not?

A. No; it was mine.

Q. But you did not tell her, did you?

A. I never spoke to her after she left the house about business of any kind.

Q. You are aware of some inquiries as to the exact meaning of that transaction, were you not?

A. It was my private property; yes.

Q. By whom were they made?

A. I do not remember.

289 Q. Don't you know that Mrs. Glover wanted to know about it at various times?

A. I do not remember. There was a bill of discovery filed and everything was told about it.

Q. That was when you were called on to answer under oath in court, was it not?

A. Yes, sir.

Q. And you did answer, but you gave no information before that, did you?

A. No; none was asked.

Q. I thought you said you heard of inquiries being made, but it was your property and you did not answer them. Didn't you say that just now?

A. Yes; I said that. No questions were made to me by Mrs. Glover.

Q. That is, you mean directly?

A. Yes.

Q. But you knew communications were being made by your counsel?

A. I knew you were making inquiries.

Q. I was representing Mrs. Glover, was I not, to the best of my ability?

A. I thought Mr. Davidge was.

Q. I was also, was I not?

A. Not that I know of.

Q. Then you were aware of communications being made by me, but did not recognize them as official?

290 A. I do not remember.

Q. Do you remember whether you refused or not?

A. No.

Q. Do you remember an application being made about the time that your inventory, the inventory made by yourself and the other three complainants, was filed in court and Mrs. Glover was sick; do you remember a letter being addressed to Mr. Davis asking whether this $45,000 was claimed as a gift or advancement or what; do you remember that; was that called to your attention?

A. I do not remember that.

Q. Do you remember Mr. Davis having a letter-press copy of the deed of trust and submitting it to Mr. Washington?

A. I do.

Q. And refusing to give me a copy?

A. No; I do not remember that.

Q. You do remember filing an answer to the bill of discovery?

A. Yes.

(The hour of 3.30 o'clock having arrived and the session having been continuous since 10.30 this morning, with the exception of fifteen minutes or so for lunch, Mr. Davis requested an adjournment at this hour until tomorrow morning, April 23, 1891, at 10 o'clock a. m.)

291 THURSDAY, *April 23rd*, 1891—10.10 a. m.

Met pursuant to adjournment.

Present as before, except the complainant Edith A. Patten.

Whereupon JOSEPHINE A. PATTEN, one of the complainants and a witness under examination at the last adjournment, was recalled to the stand and her cross-examination continued as follows:

By Mr. GLOVER:

Q. In that answer did you state that you regarded the request for a copy as impertinent?

A. I do not remember.

Q. Would you remember if the language of the answer were quoted to you?

A. Yes.

Q. Did you in answer to the bill of discovery before referred to state as follows—that is, you and your sisters: "They admit that the solicitor of these defendants, deeming any request in that behalf on the part of the complainants impertinent, did refuse the complainants to take a copy of the said deed of trust because the same and the transaction of which it formed a part concerned solely these defendants"? Do you remember that?

A. If that is in the bill of discovery, yes.

Q. But the question is a test of your recollection. Do you
292 remember whether that is in the bill of discovery or not?

A. No.

Q. You do not remember whether you stated it or not?

A. No.

Q. Do you remember whether you were consulted about the request to have a copy of this deed of trust?

A. We gave a copy.

Q. To whom?

A. To Mr. Davis.

Q. But this was a request on the part of——

A. I do not remember.

Q. You do not remember giving any directions about it?

A. No.

Q. Why did you deem it impertinent, Miss Patten?

Mr. DAVIS: Objected to because the witness has not said that she deemed it impertinent and only has admitted signing an answer in which occurred the quotation read by counsel for the defendants.

A. I never said I deemed it impertinent.

Q. Did you deem it impertinent?

Mr. DAVIS: Objected to as irrelevant and immaterial.

A. I refuse to answer.

Mr. DAVIS: You can answer that if you wish.

A. It was my own personal matter—my own personal affair.

Q. How did you expect Mrs. Glover to know whether it was a personal matter or an estate matter unless you gave her the
293 information?

Mr. DAVIS: I object upon the ground that the matter inquired of is irrelevant and immaterial and not responsive to the direct examination, and I ask counsel for the defendants to indicate the responsiveness of this inquiry to any matter in the direct examination.

Mr. GLOVER: In view of the fact that the counsel for the complainant has uniformally declined to comply with the same request, I must beg to be excused.

Mr. DAVIS: Inasmuch as on the production of the witness Beall at the session of yesterday upwards of two hours were consumed in his cross-examination, much the greater part of which was wholly

irrelevant, immaterial, and irresponsive to the direct examination, I instruct the witness that she need not answer any question to which I object as not responsive to the direct examination, and shall ask her to govern herself by my suggestion in that direction.

A. I refuse to answer.

Q. You stated just now that you informed Mrs. Glover something. What were you about to say about informing Mrs. Glover something?

A. I told Mrs. Glover at our own house that we had some money that would be accounted for.

Q. When did you tell her that?

A. The Friday or Saturday after my mother's death, in my own room upstairs.

294 Q. Do you remember borrowing twenty dollars from Mrs. Glover at one time?

Mr. DAVIS: I object to the question as irrelevant and immaterial and as not responsive to the direct examination, and I insist upon the objection and instruct the witness that she need not answer unless counsel for the defendants will indicate the relevancy of this inquiry to the direct examination.

The WITNESS: I refuse to answer.

Q. At the time of borrowing this money did you make an explanation to Mrs. Glover in regard to this income of yours from the Beall notes?

A. I never borrowed twenty dollars from Mrs. Glover.

Q. You did not?

A. No.

Q. Did you have a conversation of this kind with Mrs. Glover touching the loan of twenty dollars, that you had the interest and the interest only from some notes of Mr. Beall?

A. I do not remember.

Q. You do not remember?

A. No.

Q. Is your memory sufficiently distinct to say yes or no?

A. I do not remember anything about such conversation.

Q. You do not remember whether there was any conversation of that kind?

A. No. I remember Mrs. Glover asking me, but I never
295 told her anything.

Q. I thought you said just now that you told her you had some money which you would account for?

A. I did not say that just now.

Q. Do you remember now saying to Mrs. Glover at one time that you had some moneys that you would account for?

A. Yes.

Q. What did you refer to?

A. To the $45,000 that Beall owed us.

Q. Then why not give Mrs. Glover the details?

A. I simply said that she asked a question——

Q. Did you not say just now that you avoided giving her the details?

A. Oh, yes; you mean about the interest. You asked me if I told her anything about the interest, and I told you no.

Q. Did you tell her anything about this transaction—whether it was a payment to her or not?

A. I did not.

Q. Why not?

A. Because it was my affair, not hers.

Q. You never did tell her or anybody representing her whether this was a gift to you or payment on account of indebtedness to your mother until you answered the bill of discovery, did you?

A. I always said to anybody who would ask me that it was a payment on account to us.

296 Q. To whom did you say that prior to the answer to the bill of discovery?

A. To anybody who had a right to ask.

Q. Who asked you?

A. Mr. Davis.

Q. Your counsel?

A. Yes.

Q. Anybody else?

A. Mr. Glover, of Riggs' bank.

Q. Anybody else?

A. Not that I remember.

Q. Now, you are aware that a letter was written to Mr. Davis at the time you filed your inventory asking him to indicate for you whether this $45,000 was received by you as an advancement, gift, or payment, are you not?

A. We never claimed it anything else but an advancement.

Mr. DAVIS: Answer the question.

The WITNESS: I have.

Mr. DAVIS: Yes or no?

The WITNESS: Yes.

Q. Was the information given?

A. I do not remember.

Q. Don't you know it was not?

A. I do not remember.

Q. Who decided whether it should be given or not, you or Mr. Davis?

A. We did.

297 Q. And what did you decide?

Mr. DAVIS: Objected to as irrelevant and immaterial and as not responsive to the direct examination.

The WITNESS: I refuse to answer.

Q. You remember telling Mr. Beall not to furnish Mrs. Glover with a list of notes, of the real-estate notes of the estate?

Mr. DAVIS: Objected to as before.

The WITNESS: I refuse to answer.

Mr. GLOVER: On what ground?

The WITNESS: Mr. Davis' objection.

Q. Do you remember the application having been made to you for a list of those notes?

Mr. DAVIS: Same objection.

The WITNESS: I refuse to answer for the same reason.

Q. I believe you stated that you were in Europe or, rather, your mother was in Europe from 1880 to 1884?

A. She was.

Q. And you were there also?

A. Yes.

Q. And your sisters?

A. Yes.

Q. And you came back to America together?

A. We did.

Q. And went to living in Washington about 1885?

A. 1884.

Q. You and your sisters were at the Sacred Heart convent, were you not, during these years?

298 The WITNESS: Which years?

Mr. GLOVER: 1880 to 1884.

A. No; we were not.

Q. During what years were you there?

A. 1876 to 1880.

Q. Then you traveled from 1880 to 1884?

A. We did.

Q. Together?

A. Yes; together most of the time.

Q. During the time you were in school, from 1876 to 1880, where was your mother?

A. Part of the time in Europe and part of the time in San Francisco.

Q. During those four years was Mrs. Glover with you at the Sacred Heart?

A. She was. I was not there all the time; I was at Nantes.

Q. In the north of France?

A. The west of France, is it not?

Q. Did you attend another school separate from your sisters?

A. I did.

Q. What was that?

A. Nantes.

Q. I mean another besides Nantes.

A. Benedictines, in Paris.

Q. Any other?

A. That is all.

Q. Your four sisters remained at the Sacred Heart?

299 A. They did.

Q. I think you said just now, Miss Patten, that you had never stated to any one that this money which you claimed was paid

you in October, 1887, by Mrs. Patten, was anything but a payment on account?

A. That is all.

Q. Why, then, in your bill in this case, the first bill filed, did you state that if it was not a payment it was an advancement?

A. I never claimed it anything but a payment on account.

Q. I asked you whether the ages given in this will of yourself and your sisters, complainants in this case, were correct, and you answered me that you did not know what the ages were. I am about to read them to you and ask you if they are correct: Mary E. Patten, aged 19 years. Is that correct? The will is dated the 23rd of December, 1879.

A. I do not know.

Q. Josephine A. Patten, aged 17 years. Is that correct?

The WITNESS: What date did you say was the will?

Mr. GLOVER: December 23rd, 1879.

A. I do not think it is; no.

Q. Is she older or younger than that?

A. I was born in 1863.

Q. How do you know, Miss Patten, if your mother does not know?

A. I have always been brought up to believe I was born
300 on the 2nd of July, 1863.

Q. You think, then, that your mother was incorrect, do you?

The WITNESS: I refuse to answer that question.

Q. Edith Patten, aged 15 years. Is that correct?

A. I do not know.

Q. You have frequently gone over this part of the will to see if the ages were right, have you not?

A. I have never.

Q. Nellie Patten, aged 11 years. Do you know whether that is correct?

A. I do not know.

Q. Well, how old are you, Miss Patten?

A. I was born in 1863.

Q. How old are you now?

A. That would make me 27.

Q. You were 27 on what day of this year?

A. I was 27 my last birthday.

Q. And when was that?

A. The 2nd of July.

Q. Of this year?

A. Of last year.

Q. How old is Miss Mary now?

A. I do not know. (To Mr. Davis:) Mr. Davis, will I have to answer these questions?

Mr. DAVIS: Yes; you had better answer them.

A. I do not know.

Q. You have no idea?

301 A. I do not know.

Q. Didn't you give me her birthday yesterday?

A. Yes; in November, but I do not know what year.

Q. You know the birthday without knowing her age? You gave me the very day of the month, did you not?

A. I did—the 26th of November.

Q. And you know that without knowing how old she is?

A. I know that without knowing the year she was born.

Q. Have you any reason to believe the statement of your mother incorrect about her age in 1879?

Mr. DAVIS: Objected to as irrelevant and immaterial, and I shall instruct that she need not answer further on this line of inquiry unless counsel for the defendants will indicate the relevancy or materiality of the inquiry, the ages of all the parties to this controversy, so far as they can be at all relevant or material in this litigation, being all stated and admitted on the face of the pleadings.

Mr. GLOVER: Well, if that is true, Mr. Davis, I will not persist; but I think you are mistaken.

Mr. DAVIS: I think not.

Mr. GLOVER: You understand as well as I do that it is a question of the statute of limitations and is absolutely necessary to be definitely fixed.

Mr. DAVIS: I understand that.

Mr. GLOVER: I should not ask it otherwise.

Mr. DAVIS: Give the ages as near as you can, Miss Patten,
302 to save time.

The WITNESS: Edith was born the 12th of June, 1865; I was born the 2nd of July, 1863, and, as far as I know, Mrs. Glover was born in 1861; I am not sure about her age. I don't know Mary's age; I think it was 1859 or 1860 that she was born.

Mr. DAVIS: How about Miss Nellie?

The WITNESS: 1869.

Q. Are those the same ages stated in the will?

A. I do not know.

Q. If not the same ages stated in the will, how do you know them?

A. Of course I know them; I have always known my age.

Q. How do you know it? Have you any place to get it from except your mother; ever seen any certificate of your birth?

A. Yes; I have.

Q. When did you see that?

A. I had it when I went to the Sacred Heart, and when we left we got it.

Q. Where are they now?

A. I do not know.

Q. Where were they issued—from what authority?

A. The parish church, I suppose.

Q. Did you have them for all the family at that time?

A. I think so.

Q. It was required by the school, was it not?

303 A. Yes.

Q. In your bill, Miss Patten, filed in this case—the first bill—did you not state as follows: "And that if the payment to said defendant of said 17th day of February, 1887, as hereinbefore set forth, was not a payment to said defendant on account of a then existing indebtedness to her, the same was and is in law an advancement to said defendant," meaning interest? Do you remember that in the bill?

A. Yes.

Q. Do you know the difference between a payment and an advancement?

A. They are about the same thing, I suppose.

Q. You think they are the same thing, do you?

A. Yes.

Q. Have you used them in the same sense in your examinations?

Mr. DAVIS: Objected to as irrelevant and immaterial and as not responsive to the direct examination.

Mr. GLOVER: That is a way of choking off this inquiry for the present, and I must submit to you that I doubt its policy very much, inasmuch as it must be apparent to you that it is a fair question.

Mr. DAVIS: It is not apparent to me that it is a fair question. I do not think that it is at all a proper question.

The WITNESS: I refuse to answer.

304 Q. Do you remember being present when the safe-deposit box was opened?

A. I do.

Q. Who was present besides yourself, Miss Patten?

A. Judge Upton, I think, Senator Stewart, I think, and you.

Q. John E. Beall?

A. John E. Beall, I think.

Q. And yourself?

A. And myself.

Q. Anybody else that you know of?

A. Nobody else.

Q. One of your sisters was in the carriage, was she not?

A. I do not remember.

Q. Nobody present in the room in the safe-deposit office but those?

A. I do not think so.

Q. Was the question of giving the bond as executrix discussed that day in your presence?

A. It was.

Q. What was said about it?

A. I do not remember.

Q. Then how do you remember that it was discussed?

A. I do remember it was discussed.

Q. You don't remember anything that was said about it?

A. I remember you wanted a very low bond.

Q. Oh, I did?

305 A. Yes.

Q. On what ground?

A. I do not remember.

Q. Can you remember anything else that was said?

A. Yes. You suggested that we should take real estate in payment of our claims, Mr. John M. Glover suggested that we should take real estate in payment of our claims, and I said no; Gussy had received money and we intended to receive money also.

Q. Now, is not the fact just the reverse, that your counsel wanted a low bond?

A. It may be; some one suggested a low bond; I am not quite sure who.

Q. And yet you positively swore just now——

A. I just now positively swore that you suggested why should we not take real estate in payment of our claims, and I positively swore that I said Mrs. Glover had received money, bonds, in cash, and we intended to do the same. That is what I positively swore to.

Q. Will you be kind enough to indicate anything else that was said about the bond?

A. I do not remember anything about the bond; I took very little interest in it.

Q. Didn't your counsel want a very low bond?

A. I do not remember; somebody did.

The WITNESS: I thought it was you and you said it was me.

306 Mr. GLOVER: I have not said anything up to date.

The WITNESS; I do not know; some one wanted a low bond.

Q. It might have been your counsel.

A. I do not know.

Q. It might have been.

A. I do not know.

Q. You cannot say it was not your own counsel?

A. I only think it was you.

Q. Do you remember Upton's making any statement about your being partners with your mother?

A. No; I thought you made that statement.

Q. If I made it, what did I say?

A. I do not remember; I remember that the word partner was used and I thought by you.

Q. Are you entirely positive it was by me, Miss Patten?

A. I do not know; I thought it was by you.

Q. But you do not know?

A. No; I paid very little attention to it.

Q. Were you not very much interested and very attentive on that occasion?

A. No.

Q. You went there to open the box, did you not?

A. I did.

Q. And you and Beall made a list of the contents, did you not?

A. Mr. Beall made the list.

307 Q. You handed the contents out of the box, did you not?

A. I did.
Q. And you paid no attention to anything?
A. I said I paid very little attention to the discussion.
Q. In what connection was the subject of partners mentioned?
A. I just remember the word partners being used.
Q. Won't you try, so long as you remember that much, to see if you can recall in what connection it was used?
A. No; I cannot recall it.
Q. Upton said you were partners with your mother, did he not?
A. I do not know.
Q. You remember the agreement of 1885 was produced at that time?
A. I do.
Q. Didn't Mr. Upton say on its being produced and read that that was the outlet from giving a heavy bond?
A. I do not remember.
Q. You do not remember that?
A. No.
Q You have said so?
A. I do not know.
Q. Do you remember, Miss Patten, something being said about setting aside $100,000 for yourself and three sisters, who are complainants in this case?
A. No.
Q. You do not remember anything of that kind?
308 A. No.
Q. Didn't Mr. Stewart say when this paper was produced, "Mr. Glover, this is our outlet to avoid giving heavy bond," to which I said, "How so?" and he said, "Don't you understand?" "Let me tell him," said Judge Upton. "These young ladies are all partners with their mother; she never made an investment that they did not assent to. Now, conceding that their interest is only worth $100,000, just set aside $400,000 out of the estate, and that will give about $125,000 or $130,000, and we can give a bond for double that"?
A. I do not remember.
Q. Was not anything said about setting aside $100,000 for Mrs. Glover if $100,000 was set aside for each of you?
A. No.
Q. Are you positive about that?
A. I never heard of $100,000 being set aside for Mrs. Glover.
Q. Do you understand the question? The question was this: When it was proposed to set aside $100,000 for each of you young ladies, didn't I suggest that $100,000 should be set aside for Mrs. Glover also?
A. I do not remember.
Q. Perhaps you remember this: Then said Miss Josephine, "I do not know what we come here to talk to Mr. Glover for every day. He has nothing to do with this estate."
A. Yes; I did say that.

Q. Now, what had I been talking about? You said you
309 would not consult with me any more.

A. You asked me, for one thing, about the insurance on mama's life.

Q. But that is not an answer.

A. No; but that is one discussion we had.

Q. Now, try your memory on the matters I am asking you about first. What had I been talking about that roused your anger at that time?

A. About the estate.

Q. Now, what did I say about the estate?

A. You claimed an equal share for Mrs. Glover with us.

Q. And that is I just said then that if they set aside $100,000 for——

A. I do not remember your words.

Q. I partially refresh your memory.

A. I remember having said that—I am not going to answer the question.

Mr. GLOVER: Mrs. Glover is entitled to have your answer.

The WITNESS: I have told you now that you——

Mr. DAVIS: I caution the witness and request her not to make any remarks except in response to questions addressed to her by counsel.

Q. Now, Miss Josephine, this is a simple matter and simply a question of what you remember. I do not desire to embarrass you at all. I will repeat the question. You have just said that
310 you remember I claimed the same proportion of the estate for Mrs. Glover that her four sisters were to receive. You remember that?

A. I do.

Q. Now, I am asking you, since you remember that much, whether that claim was not made in this way, that I said, Well, if you set aside $100,000—you were then discussing the bond—if you set aside $100,000 for the young ladies, you will, of course, set aside the same amount for Mrs. Glover; then there won't be any or, at least, a very small bond to give. You remember that?

A. No.

Q. Can you state that that did not occur?

A. I do not remember that.

Q. You do not remember whether that occurred or not?

A. No.

Q. Then did you not right after that make the statement that you "did not know what you were coming here to talk with Mr. Glover — every day; he has nothing to do with the estate. I won't meet with him any more"?

A. I do not remember that I said I won't meet with him any more.

Q. You remember a little excitement?

A. Yes; when you asked me about the insurance on mama's life.

Q. Don't you know that it was not mentioned at all that day?

A. It was, Mr. Glover; you almost jumped out of your seat. Mr. Beall said, "What is that? That is an insurance paper," and
311 you said, "What is that? An insurance paper on her life," and I said, No; we would not let mama insure her life.

Q. You are simply saying that to say something irritating and insulting to me, are you not?

The WITNESS: I refuse to answer that question.

Q. Is not that so?

The WITNESS: I refuse to answer that question.

Q. How does it happen, then, Miss Patten—I will ask you another—that you are so positive about that point and you cannot remember anything else that occurred that day?

A. Because these things happened personally to me and the discussion was carried on by you and Senator Stewart and Mr. Upton, if by anybody.

Q. What do you mean by "if by anybody"? Have you any doubt about what you are now reciting?

A. I know those three people were there, but I could not be positive what they were saying.

Q. Why was that a matter personal to you more than any other matter they there discussed?

A. Because it was of personal interest to me.

Q. Why any more than any of these other matters that you cannot remember?

A. Because the questions were directly asked of me—you mean about the insurance?

Mr. GLOVER: About the insurance; yes.

312 The WITNESS: Because that was very personal to me.

Q. Explain why more so to you than any of the other questions?

A. Because—I do not know why it was.

Q. You do not know why. You remember it because you do remember it.

A. I remember it because it made a very deep impression on me at the time and a disagreeable impression.

Q. Did you not say then, "Senator Stewart, does this mean that Gussy is to get $100,000 more than us"?

A. I may have said that; yes.

Q. Then Senator Stewart said, "We will talk about that afterwards"?

A. I do not remember that.

Q. You do not remember whether he answered in that way or not?

A. No.

Q. And then you said, "We will never submit to that"?

A. I do remember that.

Q. "I was present when mama gave those bonds to sister"?

A. I never said "to sister." I may have said to my sister or Mrs. Glover or Gussy. I did not say sister.

Q. "And one of my sisters was present with me"?

A. Edith was in the room.

Q. "And mamma said to Gussy, 'Gussy, that is from your father's estate.'"?

A. Yes.

Q. That is all she said?

313 A. No; she did not exactly say those words.

Q. I am asking what you said at the safe-deposit company.

A. I must have told the truth, and, as I said, mama did say when she gave them that she gave them from his estate to her.

Q. You say Miss Edith was present?

A. I say Edith was in mama's bed-room, and I was in the hall.

Q. And you said yesterday, did you not, that it was in the boudoir?

A. No; I said the $45,000 transaction was in the boudoir; but this was in mama's bed-room.

Mr. Glover here requested that interruptions be not made by Miss Mary Patten.

To which Miss Mary Patten replied that she had made no interruption, and upon which the witness said she had heard no interruption.

Whereupon Mr. DAVIS: Miss Mary, if you are surprised by any question be kind enough to restrain any expression whatever.

The WITNESS (continuing): And that I was in the hall.

Q. Standing at the foot of the flight of stairs?

A. Yes; and almost opposite the room.

Q. At the foot of the flight of stairs on the second, leading to the third, story?

A. Yes.

Q. And Miss Edith was where?

314 A. She was in the bed-room.

Q. And which bed-room was that, the one towards the boundary or at the front of the house?

A. Mama's bed-room.

Q. What do you mean by "mama's bed-room"?

A. The one she always occupied.

Mr. DAVIS: Mr. Glover means with reference to the points of the compass.

The WITNESS: It is near the boundary, near Florida avenue, and near 22nd street.

Q. The one on the corner of the building near the boundary?

A. Towards 22nd street.

Q. Is 22nd street towards the boundary?

A. There is no boundary there; it is Florida avenue.

Q. 22nd street is between your house and Kalorama, is it?

A. Yes.

Q. Do you mean to say that you could stand at the foot of that flight of stairs and hear what was said in the bed-room?

A. Yes; I could.

Q. It is fifty feet away, is it not?

A. No; about fourteen, as I said yesterday.
Q. Where was your mother, in the room?
A. Mama was inside the room, standing near a cedar closet. I did not see mama, but I saw Gussy.
Q. How did you happen to be there, Miss Patten?
A. I was coming up from breakfast on my way up to my room.
315 Q. Why didn't you go into the room?
A. Oh, I do not know why I did not.
Q. This was the day the bonds were transferred, was it?
A. Yes; the very same day the bonds were transferred right after breakfast.
Q. What time did you go to the Treasury Department that day?
A. In the forenoon.
Q. You mean a noonday breakfast then?
A. Yes; I mean 12 o'clock breakfast.
Q. Now, you remember filing an amended petition for probate the next day or the same day of this interview at the safe-deposit company, do you not?
A. I do not remember.
Q. You remember there was an amended petition for probate which was made by yourself and your younger sisters not signed by Mrs. Glover, do you not?
A. I think there was; yes.
Q. Didn't you drive from the safe-deposit company's that morning to the orphans' court and file it?
A. I do not remember.
Q. You would recognize it, I presume, if you would see it, would you not?

Mr. GLOVER (to Mr. Davis): Have you a copy of it, Mr. Davis?
Mr. DAVIS: No, sir; I have not.

Q. Mr. Stewart was your attorney at that time, was he not?
316 A. He was my friend acting for me. I never acknowledged him as attorney.
Q. Has he not been advising you professionally?
A. Yes; as a friend.
Q. Up to the present time?
A. No.
Q. When did he cease to do so?
A. When Mr. Davis came into the case.
Q. Then Mr. Stewart retired?
A. He had never been my attorney; simply a friend, acting in a friendly way.
Q. How do you draw the distinction between acting in a friendly way and acting as your attorney?
A. Well, one offered himself; Stewart offered himself.
Q. You mean it was not on a mercenary basis—not for money?
A. I do not know; he never asked me for any.
Q. Well, he acted as your attorney in filing this amended petition, did he not?

A. I think he did.

Q. And he was present advising you at the safe-deposit box?

A. He was.

Q. You have stated that you do not know whether you said to me on that day—whether Mr. Upton said in your presence that you and your sisters were partners with Mrs. Patten in the estate?

A. I do not know anything about it, but Upton was not my attorney.

317 Q. I am asking you now what you have just said; whether you have not just said that you do not know whether Upton made that statement in your presence or not?

A. I do not think he did.

Q. Have you not just said that you did not?

A. I do not know, but I do not think he did.

Q. You do not know what you stated just now, is that it?

A. I do not think he did.

Q. Did you not go into court the next day and represent to the court that you were partners of your mother?

Mr. DAVIS: Objected to, unless any paper in which any such representation is claimed to have been made is first presented to the witness for her inspection.

Mr. GLOVER: Mr. Davis, you know we cannot get it here.

Mr. DAVIS: You can subpœna the register.

Mr. GLOVER: Stuff.

Mr. DAVIS: I will thank you, Mr. Glover, to use less offensive expressions, otherwise I will stop the examination here and make a proper application to the court to have my witness examined without insult to them or me.

Mr. GLOVER: I am responsible for anything I say.

Mr. DAVIS: And I am responsible for anything I say, if I so desire. I instruct the witness that in the absence of the paper referred to she need not answer the question.

The WITNESS: I refuse to answer.

318 Q. Did you in the amended petition for probate signed by you make the following statement:

"That the said Anastasia Patten died seized and possessed of both real and personal estate, situate in said District of Columbia, she, the said Anastasia Patten, having made her last will and testament; that the value of the personal estate of said decedent is estimated at and believed by your petitioners to be one hundred and twenty thousand three hundred and thirty-two dollars ($120,332.00); and upon information and belief the said petitioners represent as follows: that the personal property aforesaid of the said estate estimated, as above set forth, at $120,332, consists of household furniture, horses, and carriages of the estimated value of $10,000; jewelry of the estimated value of $7,000; cash in bank, $8,946.35; notes, bonds, and stocks of the estimated value of $94,385.65; that the said notes, bonds, and stocks, so estimated at $94,385.65, consists of the said decedent's undivided share and interest in notes and bonds secured upon real estate of the face value of $405,242.99, and of the

said decedent's undivided share and interest in the following stocks," reciting them. Did you use that language?

Mr. DAVIS: Same objection and same instruction.

The WITNESS: I refuse to answer.

Mr. Glover here requested the examiner to certify the last preceding question and the refusal to answer to the court, but subsequently withdrew the request.

319 Q. What did you mean in speaking of what you called Gussy's bonds, when Gussy got her bonds?

A. Bonds that belonged to her that came from my father's estate.

Q. How did they belong to her?

A. She inherited them direct from my father.

Q. Inherited the bonds?

A. Inherited the equivalent of the bonds.

Q. Were the bonds invested in her name?

A. They were always invested in mama's name and transferred to Gussy.

Q. I mean prior to the time they were transferred could they be called her bonds?

A. No; only that she had a right to them whenever she asked for them.

Q. Did she have the right to so much money or so many bonds?

A. The understanding was that she had a right to so much money, $101,600.

Q. Then by speaking of her bonds you did not mean to say that she had any interest in the bonds before they were transferred to her, did you?

A. Yes; she could have asked for them at any time.

Q. Suppose her mother had said, Take real estate or money, was she entitled to bonds?

A. I think the understanding was that they were bonds at the time the settlement was made.

320 Q. And that you were to take your share in bonds?

A. If we wanted it in bonds, although mama offered me the Glover building, on F street, in payment of my claim.

Q. Then, she was not under obligation to take bond, was she?

A. She could have had the money if she wanted it.

Q. Then, they were not her bonds until they were transferred to her?

A. They were in mama's name until they were transferred to her.

Q. Didn't you say in this paper which I have just read to you that Mrs. Patten owned an undivided share and interest in the estate?

Mr. DAVIS: I repeat my objection.

The WITNESS: I refuse to answer.

Mr. GLOVER: On what ground?

The WITNESS: The objection of my counsel.

Q. What do you mean, Miss Patten, by coming forward with a

claim against this estate for a money demand after you had signed a paper in which you made affidavit that Mrs. Patten's interest in the whole estate was an undivided share of the value of $94,385 simply?

Mr. DAVIS: Same objection and same instruction. It does not appear that any such paper was signed by the witness, and no inquiry about any such assumed paper can properly be made without its production for the inspection of the witness.

The WITNESS: I refuse to answer for the same reason.

321 Q. Do you remember whether you made such a statement or not?

Mr. DAVIS: Same objection and same instruction.

The WITNESS: I refuse to answer for the same reason.

Q. What wedding present did your mother give Mrs. Glover when she was married?

Mr. DAVIS: I object to the question as irrelevant, immaterial, and not responsive to the direct examination.

The WITNESS: I refuse to answer.

Q. Don't you know that she gave her no wedding present unless these bonds were a wedding present?

Mr. DAVIS: Same objection.

The WITNESS: I refuse to answer.

Mr. GLOVER: What is your reason for refusing?

The WITNESS: The objection of my counsel.

Q. I will ask you, Miss Patten, if your attention was ever called to the following notice served on Mr. Davis at or about this date:

"THE ARLINGTON, WASHINGTON, D. C., *Oct. 14th*, 1890.

H. E. Davis, attorney.

MY DEAR SIR: I am instructed by Mrs. Glover to make a formal request that the other executrices submit to her for inspection all

322 the vouchers and papers of the estate, including especially the papers and checks of Mrs. Patten found at the residence and those withdrawn from Riggs & Co. after Mrs. Patten's death.

Very respectfully,

(Signed) JOHN M. GLOVER."

Was your attention drawn to that at any time?

A. I think it was.

Q. Did you furnish the papers?

A. No.

Q. Why not?

A. Because I had no papers.

Q. What reply, if any, did you make?

A. I do not remember. If I made any, I do not know what its nature was.

Q. You say you did not furnish them?
A. No; because I had none.
Q. Did you not testify yesterday that you had?
A. I had a few checks; that is all.
Q. Don't you remember whether you directed any answer to be made by Mr. Davis to this?
A. I do not remember.
Q. Well, will you produce now what you have?
The WITNESS: The checks?
Mr. GLOVER: The papers called for under the notice?
A. Yes.
Q. All that you have?
A. All that I have.
Q. I do not mean checks. I mean all private papers on Mrs. Patten's business.
323 A. I have told you that I have none.
Mr. DAVIS: The question is all you have.
The WITNESS: All that I have; yes.
Q. When will you produce them?
A. At any time.
Q. Tomorrow at the examination?
A. Yes.
Q. If the examination proceeds?
A. Yes.
Q. I think you said these letters produced by Mr. Hillyer were in your possession, did you not—the letters from Deal and his letters to Mrs. Patten—in the possession of yourself and sisters or some of you? Where did Mr. Davis get them? Did he get them from you?
A. Yes.
Q. You have some papers?
A. I have those.
Q. Why did you not let us see those in pursuance of this notice of Oct. 14th of last year?

Mr. DAVIS: Objected to as irrelevant, immaterial, and not responsive to the direct examination, and especially as the witness has declared her willingness to produce all papers in her possession relating to her mother's estate.

Mr. GLOVER: The question is how far she has concealed these papers.
324 Mr. DAVIS: I content myself with making my objection on the record.

The WITNESS: I refuse to answer.
Q. Why didn't you let us have the benefit of the letter of W. E. Deal to Mr. Hillyer, dated June 10th, 1885, and the other exhibits to Mr. Hillyer's testimony of correspondence, Hillyer, Mrs. Patten, and Deal, touching the affairs of the estate? Why didn't you let us have that in pursuance of that notice?
A. I did not have them any more.

Q. Your counsel had them, did he not?
A. Yes.
Q. Was it because you did not want Mrs. Glover to see them?
A. No; I never saw them.
Q. Then what reason can you give?
A. None; I never gave it a thought.
Q. You can give no reason for ignoring the notice?
A. No.
Q. You told Mr. Beall not to give us a list of the real-estate notes, did you not?

Mr. DAVIS: Same objection.

A. I positively told Mr. Beall not to give it to you, as you had no interest in them.
Q. Did you tell him he might give them to Mrs. Glover?
A. I think I did.
Q. Did he give them to her?
A. I do not know.
325 Q. Don't you know he did not?
A. I do not know anything about it.
Q. You never gave them to Mrs. Glover, did you?
A. Not that I know of.
Q. Did you ever tell Beall that the list was made by him as your agent and he could not deliver it without your consent?
A. I do not remember.
Q. Will you say whether you did or not?
A. I do not remember.
Q. Do you undertake to say, Miss Patten, that Mrs. Glover told you that she had been paid her share of her father's estate?
A. Yes, positively. Mrs. Glover told it to me not once, but many times.
Q. Did she tell you she was paid in full?
A. Yes; she told me she had been paid in full.
Q. Why did you make an affidavit in this case that the estate was still indebted to her?

Mr. DAVIS: Objected to unless such affidavit be produced.
Mr. GLOVER: Well, I presume I can read it from the printed copy of the record?
Mr. DAVIS: You refer to the petition in the orphans' court?
Mr. GLOVER: I do; yes.
326 Mr. DAVIS: I have no objection to your showing that to the witness if you have a copy of it. I know that is correct.

Mr. GLOVER: Let me repeat the question. In your petition filed May 10th, 1889, in the orphans' court did you state under oath as follows: "That by virtue of the premises the estate of the said Anastasia Patten now stands justly indebted to the said Augusta Patten Glover in the sum of $101,600 as of the (blank) day of September, 1885, subject to a credit of $102,800 as of the 1st day of January, 1887"?
A. Yes; I remember that.

Q. How do you reconcile that with the statement that she was paid in full?

A. She was paid in full; in full for the capital.

Q. But not the interest?

A. No.

Q. Then your statement that she was paid in full was not exactly correct, but is to be modified——

A. The capital was paid in full.

Q. Did she say she was paid in full the capital and not the interest?

A. She never mentioned the interest.

Q. She did say she was paid in full, did she?

A. I do not know. As I said yesterday, I said that before dividing up we would first take out from the estate what came
327 from my father, and then I said to Gussy, "You have been paid, have you not?" and she said, "Yes; I have."

Q. I asked you just now particularly whether she said she was paid in full.

A. I do not know that she used that word.

Q. And yet you said just now that she did say so.

A. I do not know that she said that.

Q. Cannot you remember from moment to moment what you say?

A. Yes.

Q. Now, don't you remember that you did not say she used the words in full?

A. I do not know that she used it; I did not say she used the words positively "in full."

Q. Didn't I say to you, "Didn't she say she was paid in full?" and didn't you answer me that she did?

A. Yes; but I overlooked the word- in full; she did not say in full, but I remember that she often said she had been paid.

Q. Did she say she had been paid with money?

A. No.

Q. Did she say she had been paid except the interest?

A. No.

Q. Did she say she had been paid in cash?

A. No; but it was always understood between us that it was in full.

Q. Then she must have said so?

A. No; not that I remember; I do not remember that she
328 used that exact word.

Q. But you made affidavit here that she was paid in full?

A. If it is there; yes.

Q. Have you not said that you remember testifying to that?

A. Yes.

Q. Don't you remember that statement being in the bill?

A. Yes.

Q. There you make affidavit that she was paid in full?

A. She was paid in full except as to the interest.

Q. Did you say the estate was still indebted to her?

A. Interest from September, 1885, to January, 1887, a year and three months, with a credit of $1,200; she was overpaid $1,200.

Q. Do you remember making an application to remove Mrs. Glove as executrix?

A. I do.

Q. And do you remember it with pleasure the reason you are so emphatic?

The WITNESS: I refuse to answer.

Q. When was it made?

A. I do not know.

Q. Can you give the date?

A. I do not know.

Q. Was it June 28th, 1889?

A. It might have been.

Q. At that time this dispute about this $45,000 going into the inventory was still unadjusted, was it not?

A. I think it was.

329 Q. You know it was, do you not?

A. I think it was.

Q. Well, are you not positive it was?

A. I think it was.

Q. Are you positive it was?

A. I think it was.

Q. Could you be mistaken on that point?

A. I do not think so.

Q. You never did answer the bill of discovery until the Court of Appeals had refused to remove her, did you?

A. I do not know.

Q. And when you applied for her removal she had asked you through your counsel to make a statement as to how you got this $45,000, and you had declined, had you not?

Mr. DAVIS: Objected to as irrelevant, immaterial, and not responsive to the direct examination, and I shall repeat my instruction to the witness unless counsel points out the relevancy.

The WITNESS: I refuse to answer.

Q. Now, was not the object of that proceeding to remove Mrs. Glover on your part to prevent the necessity for any disclosure as to whether you received this money as an advancement or a payment or a gift?

The WITNESS: Did you say to prevent a disclosure?

Mr. GLOVER: Yes.

A. No.

Q. Then what was the object?

330 A. Because—I do not know. She was so very disagreeable, she would not do what she ought to do.

Q. That is what you wanted her to do?

A. No; what was in justice due to us.

Q. And until that proceeding was determined by the Court of Appeals against you you never answered the bill of discovery, did you?

A. I do not remember; I do not know when the bill of discovery was answered.

Q. Is it not a fact, Miss Patten, that all these refusals on your part to give information up to the time you were compelled to give it by a proceeding in court was because you had not made up your mind whether you would claim that that $45,000 was a payment to you from your father's estate or an advancement to you from your mother's estate?

A. I never claimed it for anything but a payment from my father's estate.

Mr. GLOVER: That is not an answer.

The WITNESS: It is not a fact. I never pretended to claim it for anything but a payment from my father's estate, and never intended it for anything else.

Q. Now, will you answer that question, since you have made that statement, about what was reported to you as to the effect of the interview between me and Stewart about October, 1888?

Mr. DAVIS: I repeat my objection to this question as before.

331 The WITNESS: I refuse to answer.

Q. Did you not in the amended petition for probate apply to the court for leave to give a bond to pay all of the debts of the estate?

Mr. DAVIS: Same objection as before interposed when this alleged amended petition was inquired of, namely, that the witness cannot be interrogated in respect of it without the production of the original.

The WITNESS: I refuse to answer.

(On request of counsel the examiner went to the orphans' court and procured the papers in the case 3234 and handed them to counsel for the defendants.)

Whereupon—

(By Mr. GLOVER:)

Q. Miss Patten, will you look at this document (handing witness original petition for probate taken from the office of the register of wills) and see if you recognize your signature?

A. (After examining.) Yes; that is my signature.

Q. Whose signatures are the others attached?

A. My sisters' and Mrs. Glover's.

Q. Will you please look at this document (handing witness amended petition for probate) and see if that is your signature attached?

A. That is.

Q. And the other signatures?

A. My three sisters'.

Q. Excluding Mrs. Glover?

A. Excluding Mrs. Glover; yes.

332 Q. Do you notice the signature of Mr. Stewart there as counsel?

A. Yes.
Q. And Mr. Upton?
A. Yes.
Q. Was Mr. Davis your counsel at that time, Miss Patten?
A. No.
Q. Do you notice the statement in this paper as follows (referring to the amended petition for probate filed Oct. 10th, 1888): "That the said Anastasia Patten died seized and possessed of both real and personal estate situate in said District of Columbia, she, the said Anastasia Patten, having made her last will and testament; that the value of the personal estate of the said decedent is estimated at and believed by your petitioners to be $120,332; and upon information and belief the said petitioners represent as follows: That the personal property aforesaid of the said estate estimated, as above set forth, at $120,332 consists of household furniture, horses, and carriages at the estimated value of $10,000; jewelry of the estimated value of $7,000; cash in bank, $8,946.35; notes, bonds, and stocks of the estimated value of $94,385.65; that the said notes, bonds, and stocks so estimated at $94,385.65 consists of the said decedent's undivided share and interest in notes and bonds secured upon real estate of the face value of $405,242.99 and of said decedent's undi-
333 vided share and interest in the following stocks, &c." (reciting them)? Does such a statement appear in this petition?
A. It appears; yes.
Q. You signed it, did you not?
A. I did.
Q. And Miss Mary swore to it, did she not?
A. She signed it also.
Q. Didn't she make affidavit to it?
A. I do not know.
Q. Please examine it (handing witness paper).

Mr. DAVIS: The paper speaks for itself.
Mr. GLOVER: But we are not putting it in evidence.

A. (After examining.) It appears that she did.
Q. Now, in that you say, do you not, that your mother's share in the $405,000 worth of stocks, bonds, and notes was only a little over $94,000, do you not?
A. Yes.
Q. Why did you say that?
A. Because the estate owed us $101,600, with interest, after deducting $11,250.
Q. Do you mean you were still claiming to be creditors at that time when you made your affidavit?
A. Yes.
Q. I call your attention to this clause of the amended petition: "That the said petitioners, together with their said sister, Augusta Glover, are residuary legatees under the said will, and your
334 petitioners desire to give ample security for the payment of all the debts that are due or may be or may become payable from the proceeds of the said estate." Is that in this paper?

A. It appears to be.

Q. Well, now, according to that, you wanted to take the property as your own and give a bond to pay all the debts of the estate—that is, give a bond to pay your own debts?

A. Yes.

Q. You wanted to give bond to pay your own debts?

A. I do not know about that. I always had the intention of having my own debt paid.

Q. Were you not aware when you signed this paper that the effect of giving a bond of that kind was to make you the owner of all the property of the estate and extinguish these debts which you state were due to yourself?

A. No. Do you mean extinguish the debt due to me?

Mr. GLOVER: Yes.

The WITNESS: No; I was not aware of that.

Q. It was not explained to you by your counsel?

A. It was not. It was explained to me that all excepting that $95,000 was debts due to myself and three sisters.

Q. Well, according to this, you claimed to be part owners of that estate with Mrs. Patten, did you not?

A. I always claimed that mama owed me $101,600, subject to a credit of 11,250 dollars.

Q. This paper contradicts that claim, does it not?

A. Not that I know of.

Q. Don't you understand the difference between being a
335 creditor and part owner of an estate?

A. I have never claimed to be anything but a creditor.

Q. You do not understand the difference?

A. No.

Q. Who prepared the petition for you?

A. Either Senator Stewart or Mr. Upton.

Q. One or both?

A. Yes.

Q. They are counsel learned in the law, are they not?

A. I suppose so.

Q. Senator Stewart is a Senator of the United States, is he not?

A. Yes.

Q. And is on the Judiciary committee, is he not, or do you know?

A. I do not know.

Q. Now, if I owed you some money, would you claim that you were part owner of my estate by virtue of my owing you money? Would you claim, because I owed you money, that you were part owner of my estate?

The WITNESS: Of your estate?

Mr. GLOVER: Yes; or, if you prefer, Mr. Davis' estate. If Mr. Davis owed you money, would you claim that you were part owner of Mr. Davis' estate?

A. I would claim that I was interested in Mr. Davis' estate until the debt was paid.

Q. Would you claim that you were part owner?

336 A. I would claim as creditor.

Q. But not as part owner?

A. I never claimed anything but as creditor.

Q. But not as part owner. You would not claim to be part owner merely because he owed you a debt?

A. I do not think so; I do not know.

Q. You claim here to be part owner of Mrs. Patten's estate?

A. I do not know; I never understood that before.

Q. Now, let us go back to the proceedings of the day before at the safe-deposit company while Mr. Stewart and Mr. Upton were present and the question of the bond was discussed. I will ask you if you do not now remember that Mr. Upton just the day before or the same day stated in your presence that this bond was to be given in this shape because you and your mother were partners. Can you remember now?

A. No; I do not remember that. I was under the impression that you wanted a small bond and Senator Stewart wanted a large one. I have always been under that impression.

Q. That is not the real point of the question. The point——

A. That has always been my impression, and was at the time.

Q. The question is whether Mr. Upton did not claim in your presence that you were partner with your mother.

A. I do not remember; I do not think he did.

Q. You have just testified a little way back that you did not know?

A. Well, I say I do not remember; I do not think he did.

337 Q. Now, be kind enough to examine the original petition (handing witness petition), and I will ask you whether either of these portions that I have read appear in the first petition for probate signed by you.

Mr. DAVIS: Objected to on the ground that the paper is the best evidence of itself.

Mr. GLOVER: That is preliminary unnecessarily.

Mr. DAVIS: Answer it, Miss Josephine.

A. No.

Q. Why, Miss Patten, did they appear in the second petition for probate and not in the first?

A. I do not know.

Q. Was it not this question of the bond?

A. I do not know.

Q. When you came down to the safe-deposit company that morning this petition was already prepared, was it not?

A. I do not know.

Q. Will you try to remember?

A. I cannot remember that. I do not know when it was prepared or anything about it, only when it was filed.

Q. You observed that Mrs. Glover's signature is not attached to the amended petition, do you not?

A. I observed it; yes.

Q. Do you know why that was?

A. No.

Q. One of these petitions, Miss Patten—the first was filed
338 in the surrogate's office October 3rd, 1888, and the other was filed October 10th, 1888; that was an interval of seven days. Now, I wish to ask you if you cannot remember why these material changes were made in the form of a petition.

A. No; I do not remember. Senator Stewart made them.

Q. Well, you signed them?

A. Yes.

Q. You would not have signed anything that was not in your opinion correct, would you?

A. I did not understand them at the time and I do not understand them now.

Q. Did you not discuss the matter with your counsel?

A. I do not remember.

Q. Where was the petition drawn; do you know?

A. I do not know.

Q. Where was it verified; do you know?

A. I do not know that, either.

Q. Do you know a Mr. R. H. Evans, the notary public?

A. No; I do not know him.

Q. Do you know where his office is? He appears to be the notary who took Miss Mary's affidavit.

A. I do not know where he lives and do not know him, either.

Q. You do not remember any discussion at all about the contents of that amended petition, do you?

A. I do not.

Q. All you know is that your signature is there?

A. All I know is that my signature is there.

339 Q. Well, as this took place a little later than the conversations about which you have testified as happening with Mrs. Glover, and a good deal later than some of those which you say occurred with your mother, how happened it that your memory is a blank on this and you remember the other so distinctly?

The WITNESS: About those papers, do you mean?

Mr. GLOVER: Yes.

A. I have seen so many papers that I cannot remember which ones were discussed and which were not. They are all the same to me; all seem alike.

Q. Am I to infer that when you sign a paper you are not particular about its contents?

A. At the time I read it.

Q. And at the time you are satisfied that it is correct?

A. I do not know about that paper there. I did not pay much attention to it.

Q. Did you pay less attention to that than the others; and, if so, why?

A. I paid little attention because I did not think at that time there would be any trouble.

Q. I believe you have already testified that before this petition

for probate was filed you were advised by Mr. Clark that Mrs. Glover claimed her full share of the estate?

A. No; I did not testify to that. It was after you left the house, whenever that was, I do not remember; that was the first
340 time.

Q. That was some time before the petition was filed?

A. I do not remember.

Q. You were already represented by two attorneys, were you not?

A. I was never represented by any attorney until you left our house.

Q. I say at that time you were also represented, were you not?

The WITNESS: At what time?

Mr. GLOVER: At the time the amended petition for probate was filed you were already represented by two attorneys because their signatures are attached to the paper?

A. I was.

Q. Then why do you say that you did not expect any trouble?

A. I did not until you left the house.

Q. But Mrs. Glover and I had left the house quite a while previous to that?

A. I do not remember.

Q. Then you did expect trouble at the time you filed this amended petition, did you not?

A. No; I did not.

Q. You mean to say, then, that you were——

A. (Interrupting.) I remember there was some question, but I never thought that Mrs. Glover would contest a thing that she knew so well we were justly entitled to.

341 Mr. GLOVER: Now, will you please answer the question without these excursions?

The WITNESS: That is my plain statement.

Q. You overlooked the fact that I did not ask you why, but I asked you if you did not know at that time that there was to be trouble?

A. Yes; over something, but, as I said, I did not think Mrs. Glover would ever go back on a thing she positively knew was owed to us and what she positively knew was a just claim.

Q. In that connection, would you object to stating what you know about the interview between myself and Stewart, as to the concessions Mrs. Glover offered in this matter?

Mr. DAVIS: I repeat my objection because the question calls upon the witness to state what was communicated to her by a third person purporting to eminate from Mr. Glover.

Q. Is it not a fact, Miss Patten, that Mrs. Glover offered at that interview as a matter of voluntary action, as distinguished from any obligation, to account for this whole $100,000, and that you preferred to bring a claim against the estate which would give you more with interest than that? Is that not a fact?

A. No; not that I remember.

Q. Having answered that much, will you not please answer whether you do not know that at an interview held between Mr. Stewart and myself at your suggestion and that of Miss
342 Mary, your sister, it was fully announced to Mr. Stewart by you that Mrs. Glover would take that position, and that following that you nevertheless brought this suit because you could get more money by it?

A. Oh, never.

Q. That is not true?

A. No; it is not true.

Q. Now that you have answered that, is it not true that at the time you filed this amended petition for probate you were neither thinking or discussing nor had you claimed that you were creditors of the estate at all, but that you were considering the whole estate as belonging to Mrs. Patten, and were considering that Mrs. Glover had received and you had received an advancement rather than credit?

A. No; I considered myself a creditor.

Q. Even when you made affidavit here that you owned portion of the estate you still claimed to be a creditor?

Mr. DAVIS: Objected to, as it does not appear that the witness made any such affidavit.

A. I have always considered myself a creditor, always. I always considered that mama owed me $101,600 as coming from my father. I was a creditor, nothing else.

Q. Then, as you were a creditor, how did you come to sign an affidavit made by another that of all the property standing in Mrs. Patten's name at her death only about $94,000 worth belonged to her, and the balance belonged to you and your sisters?

343 A. Yes; after deducting our claims, after deducting what mama owed to us.

Q. But you have just told me that if you had a claim against Mr. Davis you would not on account of that claim set up a pretention as part owner of that estate, and that is what you seem to have done in your mother's case.

A. I may have seemed to do it.

Q. Did you read the amended petition for probate?

A. I do not think I did.

Q. Are you willing to stand by that statement that you did not read it?

A. I do not know. I did not say I did not read it. I do not remember that I did or did not read it; it is two years and over.

Q. In the first place, were you in the habit of signing papers without reading them?

A. Senator Stewart brought me that paper to sign and I signed it.

Q. Were you in the habit of signing papers without reading them in connection with this litigation?

A. I was then not in the habit of signing any papers; then, at that time, I was not in the habit of signing any papers.

Q. Well, this other provision by which you gave a bond to pay the debts, did you read that before signing?

A. I do not remember.

Q. Do you mean to say that you do not know the differ-
344 ence between that sort of bond and the ordinary bond?

A. No.

Q. You do not mean to say that, do you?

A. I say I do not know the difference between that and the ordinary bond.

Q. Was not the meaning of the paper explained by your counsel?

A. I do not remember.

Q. Then you may have understood it because they may have explained it?

A. I do not remember.

Q. You spoke, Miss Patten, in your direct examination, I think, of not having mentioned to Senator Stewart the non-existence of certain bonds, but that Mr. Clark was aware of it, do you remember?

A. Yes.

Q. Mr. Clark was a lawyer, was he not?

A. I do not know.

Q. Do you mean to say that you do not know whether he was a lawyer or not?

A. I do not know whether he was a lawyer or not.

Q. Was he not advising you at one time?

A. No.

Q. Not at all?

A. Not at all.

Q. Very well. Now, what bonds were they to which you referred?

345 A. Government bonds. The conversation was on Government bonds.

Q. What Government bonds?

A. Owned by mama mentioned in the will.

Q. Those bonds had been sold, had they not?

A. They had.

Q. You did not disclose that to Senator Stewart, did you?

A. I did not.

Q. Why?

A. Because I did not think it was any of his business.

Q. Was he not your attorney?

A. He was simply a friend, acting in a friendly way.

Q. Still you were acting on his advice, were you not?

A. No; I did not think there was any necessity for a lawyer to look after that.

Q. Now, let us see if I can refresh your memory. Have you not testified that Mrs. Glover advised you to get Senator Stewart, and you did?

A. I did not say I did.

Q. You are positive about that?

A. I am positive about that. I said that Mrs. Glover advised me to get a lawyer, and said, "Why don't you get Senator Stewart?"

Q. And you did not follow that up by saying you would get him?

A. No; I do not think I said it. If I did, it was a mistake.

346 Q. How did he come into the controversy at all?

A. Judge Clark spoke to me and said that some one ought to look after the probate of the will, and he offered to do so as a friend.

Q. Then he did come in pretty soon after that?

A. I do not know when he came in. I think that conversation was the first we ever had had when he mentioned the Government bonds.

Q. How long had those bonds been sold?

A. I do not know.

Q. When was the estate turned into bonds?

A. That I do not know, either.

Q. When you were in Europe had it been turned into bonds?

A. No; I think it was before that; they may have been changed.

Q. But the original investment was United States bonds?

A. I do not know when it was. I think it was before mama came to Europe last.

Q. Are you pretty positive about that?

A. Yes; I am positive it was before 1880. I know they were changed from 6 per cent. to four.

Q. They were registered bonds?

A. They were.

Q. In whose name?

A. Mama's.

Q. Now, were they invested in bonds—the estate invested in bonds—some time in 1873 or '4—'4 or '5, perhaps?

347 A. I would not be surprised; I do not think 1873.

Q. Well, 1875?

A. I would not be surprised.

Q. I am not asking whether you would be surprised or not.

A. I mean I think about then.

Mr. DAVIS: I object to any statement by the witness of any fact not within her knowledge, and I object to any examination of her upon any matter not within her knowledge.

Mr. GLOVER: How can I tell what is within her knowledge without asking her?

Q. Now, Miss Patten, I think you have said there was a conversation at which Mrs. Glover was present in which Mrs. Patten regarded, or at least mentioned, her inability to place the share of Mrs. Glover or possibly of her——

The WITNESS: Of her children.

Mr. GLOVER: Of her children in trust, because she had no control over that. Now, did not the will show that these very bonds

were actually settled to the separate use of the young ladies, so that she did attempt to exercise that very control over those bonds in the will?

A. Yes; she had consulted Senator Stewart after the will was made, and he then told her she could not put money that we inherited direct from our father in trust.

Mr. GLOVER: I beg pardon; I did not mean to elicit any conversation between you and your mother. I did not ask for
348 such a declaration. I move to strike that out as not responsive. I object to it on that ground and move to strike it out on that ground.

The WITNESS: This conversation occurred at an interview when Mrs. Glover was present. Senator Stewart said she could not put money we inherited from our father in trust without our consent.

Q. How did the fact of that consultation come out at any interview at which Mrs. Glover was present?

A. Because that day Mrs. Glover had received a telegram, peculiarly worded, by which she thought you or the Glover family had to pay $250,000 to a man by the name of Dark-lantern Dick, and she then said she had not the money, that you had not the money, or we had not the money, and she said the legal index is mortgaged. Then mama said, "This convinces me more than ever of the wisdom of putting money in trust for girls," and she said, "Of course, I cannot put your money in trust, because it seems that I cannot do so without your consent; I have spoken to Senator Stewart about it."

Mr. GLOVER: And all that is not an answer to the question whether Senator Stewart was there.

A. No; he was not there. I repeated the conversation yesterday.

Q. There is a reference in the will to Mrs. Ellen Hamblin. Who is she?

A. She is my aunt. In the will it says to my sister, my mother's sister.

349 Q. She is your mother's own sister?

A. She is.

Q. And John P. Flannery is your mother's brother?

A. He is.

Q. There was a legacy to Mrs. Ellen Hamblin of $20,000, was there not?

Mr. DAVIS: Objected to, as the will speaks for itself on that subject, and, further, because the inquiry is irrelevant and not responsive to the direct examination.

The WITNESS: I refuse to answer.

Mr. GLOVER: Why?

The WITNESS: Because Mr. Davis objects.

Q. Has the legacy to Mrs. Hamblin been paid?

Mr. DAVIS: Same objection.

The WITNESS: I refuse to answer for the same reason.

Q. Did you direct that the legacy should not be paid?

Mr. DAVIS: Same objection.

The WITNESS: I refuse to answer for the same reason.

Q. Is Mrs. Hamblin in destitute circumstances, to your knowledge?

Mr. DAVIS: Same objection.

The WITNESS: I refuse to answer for the same reason.

Q. Is she without any means of support and almost without clothing and food, to your knowledge?

Mr. DAVIS: Same objection.

The WITNESS: I refuse to answer for the same reason.

350 Q. Have you paid the legacy to Mr. Flannery?

Mr. DAVIS: Same objection.

The WITNESS: Mr. Davis, may I state that Riggs' bank told me the other day that Mr. Glover had stopped the payment of the check?

Mr. GLOVER: You cannot say that; in the first place, it is not true, and, in the second place, it is not relevant. If you will make a full statement of your position, you may state anything you please about yourself, but you cannot refuse to answer this question and interject a remark of that kind.

Mr. DAVIS: I repeat my objection to this and parallel line of inquiry as palpably irrelevant and immaterial and not responsive to the direct examination, and I repeat my instruction to the witness.

The WITNESS: I refuse to answer because Mr. Davis objects.

Q. Have you made an affidavit that the estate was insolvent for the purpose of defeating these legacies?

A. No.

Q. You remember an application made by Mrs. Glover to order you to pay these legacies?

Mr. DAVIS: Same objection.

The WITNESS: I refuse to answer for the same reason.

Mr. DAVIS: I give notice that I shall move to strike from the examination of this witness all matter heretofore or hereafter
351 objected to by me as irrelevant and not responsive to the direct examination or for any other reason, and I repeat my instruction to the witness, as I decline to permit the complainants in this case to be at the expense of irrelevant, immaterial, and improper testimony.

Mr. GLOVER: If it is a question of expense, the counsel for the defense offers to bear it. I presume that will be sufficient, won't it? I will very cheerfully pay the expense of the answers to all of these questions if it is a matter of expense.

Mr. Davis ignores the remark.

Q. Miss Patten, will you be kind enough to look at these two

pages in this book and see if you recognize the handwriting (handing witness a book)?

A. (After examining.) I am sure I do not know whose writing it is.

Q. Not yours?

A. Not mine.

Q. Not any of your sisters', so far as you know?

A. No.

Mr. GLOVER: I am under a misapprehension, then.

Mr. DAVIS: I will tell you whose handwriting it is if you want to know.

Mr. GLOVER: I do not want to know.

Q. When did you first learn, Miss Patten, that Mrs. Glover—I beg pardon, but you are conversing with Miss Mary about this case.

352 The WITNESS: No; I simply made a remark.

Mr. GLOVER: Not about this case?

The WITNESS: No.

Mr. GLOVER: Will you please avoid conversing with anybody while you are on the stand? When did you first learn, Miss Patten, that Mrs. Glover was in search of information as to the $45,000 note?

A. I do not remember.

Q. Did you not learn it very shortly after the 11th of Sept.?

A. I really do not know. If she had asked me I would have given the information.

Q. Have you not already testified that you expressly avoided giving her any information about it?

A. If she had personally asked me I would have given her the information, although it was not her affair.

Q. Have you not already testified that you avoided giving her any information?

A. I do not know about expressly avoiding.

Mr. GLOVER: Well, avoided without the expressly.

A. I only once mentioned the subject to her.

Q. But have you not testified, Miss Patten, that you intentionally avoided disclosing anything to her? Have you not said that in plain English?

A. I would not be sure.

Q. And if you were in doubt about that, how can you say you would have told her?

A. If she had asked me a direct question I would have

353 told her.

Q. Didn't she ask you a direct question?

A. Never.

Q. Didn't you tell her that you only got the interest?

A. Not that I remember.

Q. Well, then, you cannot remember whether you did or not. Is that it?

A. That is it.

Q. What was the object, Miss Patten, of your being appointed collector of the estate?

Mr. DAVIS: Objected to as irrelevant, immaterial, and not responsive to the direct examination.

The WITNESS (to Mr. Davis): Do you want me to answer?

Mr. DAVIS: Yes.

A. To have somebody collect the—I do not know exactly what. To collect all the estate affairs, and then I filed a collector's inventory.

Q. Was not the real object to get this note out without anybody knowing anything about it except yourself?

A. Oh, no.

Q. That was not the object.

A. No.

Q. You did get the note out without anybody knowing about it?

A. I think—I would not be sure—but I think I took the note out the day you were at the safe deposit.

354 Q. Do you feel as positive about that as you do about the interviews with Mrs. Glover?

A. No; I know I took it out, and I think I took it out that day.

Q. Well, if you could be mistaken about one, why not about the other?

A. I could not be mistaken about the other.

Q. You could be mistaken about this?

A. I know I took it out, but I would not be sure what day.

Q. Well, it was produced that day at the safe-deposit Co., was it not?

A. Yes, sir.

Q. Everything was put back, was it not?

The WITNESS: I do not know; was it?

Mr. GLOVER: I am asking you.

A. I do not know when I took it out, but I know it was in there that day, and I thought I took it out that day.

Q. Have you not testified, in answer to the bill of discovery, that you withdrew that note when you were collector?

A. I do not remember.

Mr. DAVIS: I object to the question and answer because the statement inquired of purported to be contained within a written paper. The witness cannot be interrogated about it without an exhibition of the paper.

Q. Did you not testify, in answer to the amended bill of discovery, case 11742, substantially as follows: That the $45,000 note
355 and all the interest notes were withdrawn by you and deposited to the general credit of yourself and your three unmarried sisters from the box of which you obtained possession as collector of the estate and not before?

Mr. DAVIS: I object to the question as being an interrogation of the witness in respect of a paper-writing purporting to have been signed by her and which is not produced.

Mr. GLOVER: I do not understand that there is any such rule, but I do understand that the question will not be answered if you say so.

The WITNESS: I refuse to answer, as Mr. Davis objects.

Mr. Davis here tenders counsel for the defendant from the clerk's office copy of the answer referred to, and suggests that it may be used for the original for purpose of this examination.

Q. That note was deposited by you, was it not, at Riggs and Company, that $45,000 note?

A. It was.

Q. How long after it came into your possession was it so deposited?

A. Immediately, I think.

Q. That was about the 9th of Jan., 1889, was it not?

A. I do not know. It must have been.

356 Redirect examination.

By Mr. DAVIS:

Q. In your answer just made you are reported by the stenographer as having answered the question, "I do not know. It must have been." Was that your answer?

A. Yes.

Q. How do you mean it must have been deposited on the 9th of Jan. or about that time, if you do not know?

A. I thought that Mr. Glover was quoting from Riggs' bank, although I do not know if he did or not.

Q. Now you have been interrogated at some length about the opening of the safe-deposit box. When did you first open the safe-deposit box, before or after you were appointed collector?

A. Before.

Q. It appears in the papers upon which you were examined by Mr. Glover that the original petition for probate of your mother's will was filed on the 3rd of Oct., 1888, and the amended petition was filed on the 10th of Oct., 1888, and I have before me the order of the court appointing you collector, which is dated the 24th of Dec., 1888. Have you now any present recollection as to when you took the $45,000 note and the interest notes from the safe-deposit box?

A. No; I was always under the impression I took them that day.

Q. Which day?

357 A. The day Judge Upton and Senator Stewart went to the safe-deposit Co., before I was appointed collector, but I may be mistaken.

Q. In any event, the notes were taken into your possession?

A. They were.

Q. And afterwards deposited in the banking-house of Riggs and Company?

A. They were.

Q. Can you remember now how you got access to the safe-deposit box before you were appointed collector?

A. Because I was on the book designated by mama.

Q. Because you were on the safe-deposit books with the privilege?

A. I do not know my name was on the books. Mama and I went together.

Q. And did you or not know her password?

A. Yes; I did.

Q. And had you or not access to the keys?

A. I had the keys; yes.

Q. Who first suggested going to this box, if you know?

A. I do not remember.

Mr. GLOVER: On which occasion, Mr. Davis?

Mr. DAVIS: The first.

A. I do not remember who suggested it.

Q. In any event, you and Mr. Upton and Senator Stewart and Mr. Glover and Mr. John Beall went to that safe-deposit box before you were appointed collector?

358 A. Yes.

Q. And you got access to the box by reason of the fact already related that your name was on the books and you had the key?

A. I suppose so. I know my name was on the book.

Q. Well, at that time had the original petition for probate been filed, if you know?

A. I do not know.

Q. When you went there to the safe-deposit Co. where did you go, in what room?

A. Downstairs; a little room near the door as you come in. I think it is Mr. Snyder's own room.

Q. Who took the box out of the vault?

A. I think I did; I do not remember.

Q. And where did you carry it?

A. To that little room near the door.

Q. You were all present there, were you?

A. Yes.

Q. Who opened the box?

A. I think I did.

Q. And you have already said that Mr. Beall was making a list of the contents of the box?

A. I read the contents out and he made the list.

Q. You were engaged in doing that; what were the others engaged in doing?

A. Looking on.

359 Q. At what stage in the proceedings did you come upon the agreement of 1885, which you all five signed and in which you fixed upon the sum of $101,600?

A. It was in the box. I knew it was there.

Q. But I mean did you come upon it early or late in the examination of the contents of the box?

A. I do not remember.

Q. Were the papers in the box at the bottom or top?

A. On the bottom, I think.

Q. And you and Mr. Beall were engeged in listing the contents of the box and the others were standing about. Now, did you hear all the conversation that took place or may have taken place between those other persons while you and Mr. Beall were engaged in listing the contents of the box?

A. I did not pay much attention to the conversation.

Q. Did you hear any discussion between Mr. Stewart or Mr. Upton, on the one side, and Mr. Glover, on the other, in relation to making the bond as small as possible?

A. There was some conversation.

Q. Did you follow it?

A I understood Mr. Glover wanted the bond made small.

Q. The question of the bond is not asked, but whether you followed that conversation?

A. Not entirely.

Q. What were you doing?

360 A. Doing nothing. I do not think the conversation took place until after the box had been examined.

Q. At what point?

A. Mr. Glover discussed the value of some black pearls that were in the box.

Q. Well, at what point did you make the remark that you have testified to about insurance that brought from Mr. Glover the inquiry whether it was life insurance?

A. At the bottom of the box there was a paper. I think it was the insurance of the property on the corner of 16th and K streets, and Mr. Beall said, "What is that?" and I said it was an insurance paper, and Mr. Glover jumped and said, "An insurance on her life?" and I said, No; we would not let mama have her life insured.

Q. Who took that insurance paper from the box?

A. It was put back again.

Q. No; but who drew it out of the box?

A. I did.

Q. And when was the inquiry directed to you—when you had just taken it out of the box or after it had been put back in the box?

A. Just as it was taken out of the box I said to Mr. Beall, "It is an insurance paper."

Q. Mr. Beall was engaged in making the list?

A. Yes.

Q. And at that point in the conversation, when Mr. Glover

361 spoke of life insurance, you became irritated and lost your temper?

A. No; I did not lose my temper.

Q. You spoke sharply to Mr. Glover?

A. I said we would not let mama have her life insured.

Q. What was your humor at that time?
A. Contempt and indignation.
Q. And you manifested it, did you not?
A. Yes; I hope I did.
Q. Before quitting this point in time, have you now any recollection of the circumstances under which the amended petition for probate was filed?
A. I think Senator Stewart thought it was the quickest way to get our claims paid, but I am not sure.
Q. Do you know whether, for instance, it was prepared by Senator Stewart or Mr. Upton or somebody else?
A. I think it was prepared by Senator Stewart and Mr. Upton together.
Q. Have you any recollection where you signed it?
A. At home, I think.
Q. At your house?
A. Yes.
Q. Who brought it to you?
A. I do not remember.
Q. Well, was it Senator Stewart or Mr. Upton?
A. It was Mr. Upton.
Q. Where did you sign it?
A. In the library.
362 Q. Did he or not read it to you?
A. Well, I do not remember now. I do not think he entirely read it.
Q. Did he not explain it to you?
A. He tried to, but I never understood his explanation.
Q. As nearly as you did understand him, what was your apprehension of the purpose of the paper?

Mr. GLOVER: I object on the ground that it is a well-known principle of law that a witness is not permitted to swear that she did not understand a paper that she has signed.

A. I thought it was gotten up so as to quicken things—facilitate things.
Q. You have been cross-examined at some length about this paper. I will ask you if you know who suggested it first.

Mr. GLOVER: I object to that as immaterial.

A. I do not know; either Stewart or Mr. Upton.
Q. You have said that you did not see your mother at the time when she gave the bonds to Mrs. Glover. Where was Mrs. Glover standing at that time?
A. In the doorway.
Q In the doorway of what?
A. Between mama's room and the hall.
Q. You were standing at the foot of the stairs?
A. Yes.
Q. Leading up to the next story?
A. Yes.

363 Q. Where was your mother?

A. The door was between her and the hall; it is a double door; one side was closed.

Q. Could you see any portion of your mother's person?

A. I saw her hand as she handed the bonds.

Q. How did you know at that time and how do you know now that it was the bonds?

A. Because I heard Gussy say, returning them to her, "Keep them for me as you have kept them so long."

Q. How about the form in which they were; were they in a packet of any kind?

A. I do not know. There were four twenty thousands.

Q. Were they not exposed so that you could see them?

A. Yes; they were without an envelope, I think.

Q. Could you see your sister Edith from where you stood?

A. No.

Q. Where was she?

A. Inside of the room.

Q. How do you know that?

A. Because I went into the room immediately afterwards.

Q. I understood you to say, on your cross-examination, that you were on your way up from breakfast at the time she opened them?

A. Yes.

Q. And you continued on into the room where your sister was?

A. No; instead of going upstairs I went into the room where mama was.

364 Q. Where your sister was?

A. Yes.

Q. Which was your mother's room?

A. Yes.

Q. And then there occurred the conversation which you have already described?

A. Yes; and there occurred the conversation in which mama told me what she had said to Gussy.

Q. That is the conversation to which you have already testified on your direct examination?

A. Yes.

Q. You were shown on the cross-examination two pages in a book handed you by Mr. Glover and you were interrogated as to the handwriting. You stated, as I understood you, that you could not identify that handwriting?

A. Yes.

Q. Are you acquainted with Mr. William Flather, of Riggs & Company?

A. Yes.

Q. Are you familiar with his handwriting?

A. Yes.

Q. What do you now say?

A. That is his handwriting.

Q. Did you ever see that paper before, if you know—the statement appearing on those two pages?

A. I have seen one just like it, if it is not this one; but I knew the writing, though I could not say at the time whose it was. I saw it in a book.

365 Q. You say you saw it in a book. What book?

A. A book I have.

Q. Made by whom?

A. By Mr. Flather.

Q. Who is Mr. Flather?

A. He is in Riggs' bank; a clerk, I suppose.

Recross-examination.

By Mr. GLOVER:

Q. What was this statement made for, Miss Patten?

A. Debts owed by the estate, so they could be paid.

Q. Yes; the one entitled "List of funeral expenses," I believe; another, "List of bills due by the estate of Anastasia Patten," I believe?

A. Yes.

Q. Another, "List of bills against estate of Anastasia Patten which have been paid by executrices," are they not?

A. Yes—no; I beg pardon.

Mr. DAVIS: That is what it is entitled.

Q. What does that title indicate?

A. It indicates my three sisters.

Q. You and your three sisters?

A. Yes; and the funeral expenses were also paid by us.

Q. For what purpose was this list made up?

366 A. So that some day it might be repaid to the people who paid it.

Q. This was turned over to Mr. Davis, was it not?

A. I think it was.

Q. With a view to presenting it to Mrs. Glover for the purpose of liquidation?

A. Yes.

Q. There is a statement here under the head of "Bills against the estate of Anastasia Patten which have been paid by the executrices" as follows: Private car, Boston to Washington, $259.00; telegram, $4.32; total, $263.32. Did you notice that?

A. I did.

Q. At the time you presented or turned over to Mr. Davis for the purpose of presentation to Mrs. Glover this account, did you not know that that item of $263.32 had been charged to Mrs. Patten's bank account and was not paid by you?

A. I beg pardon, it was not charged to Mrs. Patten's bank account. It was paid by Mr. Beall, who charged it up against us.

Q. You are quite positive about that?

A. Yes.

Q. You are positive it was charged up against you, but are you also positive it does not appear on the books of Riggs & Co.?

A. It does not.

367 Q. Have you looked to see?

A. No; but I heard them say they could not honor the telegraph demand by you.

Mr. DAVIS: I object to any statement of the witness of any fact not in her own knowledge.

Q. You do not know about that, then?

A. I know positively that we paid it; that Mr. Beall telegraphed the money to Boston and charged it to us and we paid it.

Q. Well, I ask because I was shown by Mr. Riggs the account of Mrs. Patten, in which this item seemed to be paid out of the estate. From that statement could you say positively whether it was or not also paid out of the moneys in the bank?

A. I am almost sure it was not paid out of moneys in the bank.

Q. Did you have a statement of her account with Riggs & Co. at the time you made this out?

Mr. DAVIS: Objected to, because it has not been testified that this paper under consideration was made out by the witness or any of the complainants.

A. That was made out by Mr. Flathers.

Q. But did you have a statement from the books of Riggs & Co. of what charges had been paid out of your mother's bank account?

A. Nothing had been paid out of my mother's bank account.

368 Mr. DAVIS: Just answer the question. It is about this paper.

A. Yes; I had.

Q. Have you that still?

A. It is in the collector's account.

Q. Down to what date was that account carried?

A. The date of the filing.

Q. Of the collector's account?

A. Yes.

Q. Under the head of "List of bills due by estate of Anastasia Patten" there is an item here as follows: Balance due on R-street lots, $2,027. Do you remember that?

A. I do.

Q. That item has been paid by you and your sisters, has it not?

A. It has been paid.

Q. Therefore it was not due by the estate unless it was due by you?

A. At the time of the making of that it had not been paid.

Q. Still outstanding?

A. Yes.

Q. In Mr. Davis' hands?

A. No; in the owner's hands.

Q. You had not then, at that time, furnished the money with which Mr. Davis purchased those notes? You and your sisters had not at that time furnished the money?

A. I never furnished Mr. Davis any money.

369 Mr. DAVIS: He is talking about the notes on the R-street lots.

The WITNESS: When were they bought?

Mr. DAVIS: I have forgotten.

The WITNESS: If it is down there it was after that.

Q. Are you sure?

A. If it is down there it was after that. That list was made almost immediately. It was made between October and January, I think.

Q. Of 1888?

A. Of 1888; yes.

Q. There was a list made of the contents of the box, was there not?

A. I think there was.

Q. Have you that list still?

A. I never had it.

Q. Was not one copy made out for your side of the case and one for Mrs. Glover?

A. Yes; but I never had it.

Q. You saw it, did you not?

A. I do not remember much about it. I think there was a copy made of it, and I must have seen it.

Q. Where did you see it?

A. At the safe deposit.

Q. Was it made that day?

A. I do not know. I saw one list at the safe deposit, and that is the only list I ever saw.

370 Q. Who had it?

A. Mr. Beall had it then.

Q. Can you state the other contents of the box besides the policy of insurance?

A. The policy of insurance? I think there was the deed of trust to the Wheeler house; I am not sure about that, but I know it could not be found anywhere else; then there was this agreement and the $45,000 notes and interest notes and some shares of brick stock and all those stocks that are named in the inventory, and there was some jewelry.

Q. Do you not remember that Mr. Beall proposed to take out one of his interest notes and pay it, and that Mr. Snyder forbad- anybody to take anything and told him he might pay the note and get it afterwards, and, as a matter of fact, nothing was taken out that day?

A. I do not remember that he did.

Q. Why did he not take it? Did not Mr. Snyder object?

A. I do not remember.

Q. Mr. Stewart?

A. I do not remember.

Q. Do you not know, as a matter of fact, that nothing else was taken out that day?

A. I thought I took out those notes; I may have been mistaken.

Q. What reason had you to think so?

A. I do not remember, but I thought I took those notes out.

371 Q. Will you testify that there was any policy of insurance in that box?

A. There was an insurance paper on a house. I think it was the Wheeler house.

Q. Will you testify that there was any policy of insurance there?

A. I will testify that there was an insurance paper in the box?

Q. What do you mean by insurance paper?

A. A paper made out to insure a house or something; there was an insurance company's name written on the top.

Q. Was that listed?

A. I do not remember.

Q. Please give any data you can about it.

A. I tell you I do not know anything about the list, but I do remember that the insurance paper was there.

Q. On what house was the insurance paper?

A. I think, as far as I remember, it was on the Wheeler house, K and 16th streets, but as I did not examine the paper I do not know.

Q. Well, if you did not open it, how do you know what house it was?

A. Because I knew the Wheeler papers were in there.

Q. How do you know it if you did not examine them?

A. I put them there myself.

Q. When?

A. Long before mama died.

372 Q. How do you know that they had not been taken out; were there any marks on them?

A. No.

Q. Any name?

A. I do not know, but I was under the impression at the time that it was the Wheeler house, corner of K and 16th streets.

Q. You say that you went into the bed-room on the day the bonds were given Mrs. Glover after the interview between your mother and Mrs. Glover, did you not?

A. I did.

Q. And that then your mother told you what she had said to Gussy?

A. She did; repeated it to me.

Q. Had you heard what she said?

A. No; I had not listened.

Q. Then you only know by your mother's statement?

A. I only know from what she told me, my mother's statement.

Q. As to what transpired?

A. I saw the bonds being given and I heard Mrs. Glover's answer.

Q. And the rest you know simply——

A. (Interrupting.) The rest I know because mama repeated it to me.

Q. Was Mrs. Glover there when she repeated it to you?

A. No; not that I know of.

373 Mr. GLOVER: I move to strike out this testimony as inadmissible, the witness having previously testified that she was present at the interview and heard it all, and it now developes that all she heard was what Mrs. Glover said and when she went into the room Mrs. Patten told her the rest.

Q. In this little safe-deposit box, or rather room, in which the box was opened, it was not over six feet long, was it?

A. I do not know; I never took the dimensions of it.

Q. Parties had barely room to sit down, had they?

A. There was not much room.

Q. Could a word have been uttered in that room that you did not hear?

A. No; I do not think there could have been, but I did not pay attention to everything that was said.

At this point a recess was taken until 2.15 p. m.

After Recess.

Miss JOSEPHINE A. PATTEN recalled.

Redirect examination by Mr. DAVIS:

Q. I overlooked a question or two that I intended putting — you before the recess.

Q. You were asked on the cross-examination about your appointment as collector; did you return an inventory as such collector?

A. I did.

374 Q. Look at this paper now shown you and state if you recognize that (handing witness the paper).

A. Yes.

Q. What is it?

A. It is my collector's inventory; that is my signature.

Q. Please examine it.

A. (After examining.) Yes; it is my collector's inventory.

Q. That is the inventory you made as collector of your mother's estate under the appointment of our court?

A. It is.

Q. Did you afterwards, as executrix, unite in the inventory of the estate?

A. Yes.

Q. And in your collector's inventory and in the inventory in which you united as executrix did you or not return all the papers belonging to your mother or standing in her name of which you had any knowledge at the time of making the respective inventories?

A. Yes.

Mr. GLOVER: I object to that as irrelevant.

Q. And what do you say as to those inventories containing or not containing a complete list of all the personal property in each of the amended petitions which has been referred to? You appear to have made claim as partner.

The WITNESS: What do I say to it?
Mr. DAVIS: Yes.
A. I say it is all there.
375 Q. In each of the inventories?
A. In each of the inventories.

Mr. Davis here desires to say that, as he cannot offer in evidence these original inventories, he will procure a certified copy of each to be made and offer them in evidence in connection with the testimony of this witness.

Mr. GLOVER: The originals can be considered in evidence subject to objection.

Mr. DAVIS: I cannot file them.

Mr. GLOVER: From the transcript when the cases are made up they can be copied in.

Mr. DAVIS: I do not care to put either the original or amended petition in now.

JOSEPHINE A. PATTEN.

Subscribed and sworn to before me this 26th day of May, 1891.
ALEXANDER H. GALT, *Examiner.*

376 HELEN PATTEN, one of the complainants, was produced as a witness in behalf of the complainants.

Whereupon—

Mr. GLOVER: I object to Miss Helen Patten as not being a competent witness for any purpose, being a party to the record and a party in interest.

The witness was then sworn and deposed as follows:

By Mr. DAVIS:

Q. You are one of the complainants in this case, Miss Patten, are you not?
A. I am.
Q. Look at the paper now shown you and state if you know what it is (handing witness Complainants' Exhibit No. 5).
A. (After examining.) I do.
Q. What is it?
A. It is an agreement between my mother and my four sisters for the money which she owed to them.

Mr. GLOVER: I object to that as giving a legal character to the instrument, which speaks for itself, and also because the evidence is immaterial, irrelevant, and incompetent.

Q. Did you or not sign that paper?
A. No; I did not sign it.
Q. Have you any knowledge of its execution?
A. I remember that it was executed in Warrenton, Virginia.
Q. Were you asked to unite in its execution?

Mr. GLOVER: I object on the same grounds.

377 A. No; I was not asked because I was under age.

Q. That paper appears to have been executed in September, 1885. How long after that did you remain at Warrenton, if you can remember?

A. I think we came back the December following.

Q. How long had you been at Warrenton?

A. I had been there since the third of September.

Q. And who had been there—all of you?

A. My mother and my four sisters.

Q. Have you any knowledge at all as to the preparation of this paper?

Mr. GLOVER: Same objection.

A. Yes; I know it was prepared by Judge Hillyer in Washington.

Q. And when did you first see it in the form in which it now is? You first saw it when it was brought down to Warrenton, Virginia?

A. When my sisters signed it.

Q. Do you remember when your sister, Mrs. Glover, was married?

A. I do.

Q. When was it?

A. The 21st of February, 1887.

Q. Between the execution of this paper, in September, 1885, and the marriage of your sister, Mrs. Glover, on the 21st of February, 1887, what, if anything, did you hear your sister, Mrs. Glover, say in relation to that paper?

378 A. I heard her very repeatedly mention to me that she had this money; in fact we all were entitled to this money, and in fact she also repeated to me that if this money was not paid over to her when she was married she would ask for it, as it was hers. She also informed me that I had some money.

Q. From what source, if it was mentioned?

A. From my father's estate.

Q. Where were you at the time of your mother's death?

A. We were in Portland, Maine.

Mr. GLOVER: This evidence is objected to on the ground that the declaration of Miss Patten, while evidence against herself in a certain sense, are not evidence against the estate, being made before she was an executrix. The testimony is incompetent, irrelevant, and immaterial, at least to certain phases of the case.

Q. You mother died on the 11th of September, 1888. How long after her death did you come to Washington?

A. My mother died on Tuesday, I think, and we came on the Wednesday or Thursday following. It might have been later than that, but about that time.

Q. Do you remember when your mother's will was read? I do not mean do you remember the day, but do you remember the occasion?

A. Yes, sir; I do.

Q. Where was it?

A. It was read in our house, No. 2122 Massachusetts Ave.

379 Q. By whom was it read?

A. I think it was read by my sister Mary or Mrs. Glover; I cannot say.

Q. Who were present?

A. All of my sisters were present and myself.

Q. Any one else?

A. No one else.

Q. What, if anything, was said at that time by any of you, Mrs. Glover being present, as to the disposition of the estate?

A. After the will was read Mrs. Glover suggested that we leave the estate as it was and check against the income, and my sister Josephine then turned to Mrs. Glover and told her that before that could be done each one of us would have to be paid what she had been paid and what came to us from my father's estate, and Josephine said, "You have received your share, have you not?" and she said yes.

Q. Was that all the conversation?

A. No; I believe my sister Josephine said to Mrs. Glover, "You know, by the way, these bonds have gone up," and she said, "Did you sell yours?" Whereupon Mrs. Glover did not answer definitely.

Q. Have you now any recollection as to how long that was before the petition for probate of the will was filed?

A. No; I cannot safely say that; I never paid much attention.

380 Q. Do you remember Senator Stewart and Judge Upton being at the house in connection with the administration of your mother's estate?

A. I remember Senator Stewart and Judge Upton being there frequently.

Q. Did you know how they happened to be there?

A. I always understood that Senator Stewart came simply as a friend, we being entirely alone, thinking we would need somebody to advise us.

Q. And how about Judge Upton?

—. Senator Stewart brought Judge Upton.

Q. Do you know for what purpose?

A. No; I do not know.

Q. Were you present at the interview in which your sister and Mrs. Glover took part in the library of your house when Senator Stewart and Judge Clark were present?

A. Yes.

Q. Who were present at that interview?

A. Judge Clark, Senator Stewart, Mrs. Glover, my sister Josephine, my sister Mary, and myself.

Q. Where was your sister Edith, if you know?

A. She was not in the room. I do not know where she was, unless she was upstairs in her own room.

Q. Do you remember what occurred at that interview?

A. Yes. I remember they discussed the affairs of the estate and how it should be arranged. I think they talked about pro-
381 bating the will; I am not sure; I cannot say for certain, but I do know that Senator Stewart said there would be nothing easier than to settle it. He said there should first be paid what was coming from my father, and he said, There is nothing easier than that is; Mrs. Glover has received hers, and he turned to Mrs. Glover and said, "You have received yours already?" and Mrs. Glover said yes.

Q. What was said after that?

A. After that I think they talked for some time about—after that Mr. Glover, if I remember right, came into the room, and shortly after that he called Mrs. Glover out of the room.

Q. Was or was not any conclusion arrived at on that occasion as to the application for probate?

A. I cannot say for sure about that, because I did not pay much attention to the legal affairs; I thought my other sisters were taking care of it.

Q. Before your mother's death had you any knowledge of any transaction between your mother and your sister, Mrs. Glover, in respect to Mrs. Glover's interest in her father's estate?

Mr. GLOVER: Same objection.

A. Yes; I heard it spoken of as far back as 1882, in Geneva, in Switzerland.

Q. Well, what occurred there?

A. My sister had some words with my mother about something she wanted to buy.

382 Mr. GLOVER: Which sister?

A. The WITNESS: My sister, Mrs. Glover; whereupon Mrs. Glover told her that she should have money of her own, and said, I have money of my own and want it, and my mother said, You can take it and see how long you can keep it.

Q. That was in Geneva in 1882; what time of the year was it?

A. About Christmas time. It was on the subject of some earrings or some jewelry.

Q. After that and before this paper was signed in 1885 did you hear anything said by your sister, Mrs. Glover, in relation to that matter?

A. Yes; Mrs. Glover repeatedly told me that I was entitled to money from my father's estate, and she also repeatedly told me that if it was not given to her when she was married she would ask for it, as it was hers and she had a right to it.

Mr. GLOVER: The last objection is objected on the additional ground of tending to establish an indebtedness on the part of the estate. The declarations of Mrs. Glover made before she was appointed executrix are not evidence.

Q. Well, after the paper was signed in 1885 did she or did she not make this same statement of her intention to ask for what belonged to her from her father's estate?

A. She repeatedly told me she intended to ask for it.

Q. Were you or not present on any occasion when your mother gave your sister, Mrs. Glover, any bonds or any other thing of value as purporting to be in discharge of your mother's obligations to your sister as her guardian?

383 A. Yes.

Q. When was the occasion; do you remember your mother giving your sister any bonds or anything purporting to be bonds shortly before her marriage?

A. No; I was not present.

Q. Did you or not see your mother at any time during that period, at that point of time when your mother made any statement to you about that matter?

Mr. GLOVER: I object unless Mrs. Glover was present, and whether she was present or not I object to it on the ground of its immateriality.

A. Yes.

Q. State the circumstances.

A. My mother told me——

Mr. GLOVER: Was anybody present except you and your mother?

The WITNESS: No.

Mr. GLOVER: I object then.

A. The WITNESS: My mother told me she had given Gussie her bonds. She used that expression and said, "I feel easier now."

Q. When was that with reference to your sister's marriage?

A. That was shortly before my sister's marriage. She also said that she did not wish my sister to ask her for them. She gave them before she could ask for them.

Q. Do you remember any conversation in which your mother and your sister, Mrs. Glover, took part when the subject

384 *subject* of putting yours in trust was mentioned?

A. Yes; I was present one Sunday in my mother's bedroom, and Mrs. Glover was also present, when Mrs. Glover received a telegram so peculiarly worded——

Mr. GLOVER: Same objection.

(The Witness continuing:)—from St. Louis, that Mrs. Glover thought he would have to pay damages to the amount of $250,000 to a man by the name of Dark-lantern Dick, who Mr. Glover had a lawsuit with or something; whereupon Mrs. Glover became very much excited and said, "What shall we do? I have not the money, Mr. Glover has not the money and I have not," and she also said that the legal index was mortgaged; whereupon she was very much excited and my mother told her that she had better go to Mrs. Chandler's, who lived next door or a few doors away; that her husband was a lawyer from St. Louis and might understand the reading of the telegram, but before Mrs. Glover had put on her hat to go there was some more talk. My mother said she was always sorry when a girl's money was not put in trust; that if she had her way she would put it all in trust. She said, I cannot put your money in

trust. I think my sister Josephine was there. She said, I cannot put your money in trust, as it is not mine to put in trust, and I cannot do it without your consent; Senator Stewart has told me so.

Q. Is that all the conversation that you now remember?

A. Yes; I think that is all the conversation; Mrs. Glover then went to Mrs. Chandler's.

385 Q. Was anything said in that conversation about making more money when it was not in trust, when the money was free, or something like that?

A. Mrs. Glover objected to the money being put in trust because she said that money not in trust could be increased, and if it was in trust it could not be; my mother said it was a great deal better such as it was to have it safe than to run the risk of losing it entirely.

Q. Now, Miss Helen, with reference to the $45,000 note which has been testified to here, look at the paper now shown you, and state if you recognize it, (handing witness Complainants' Exhibit No. 7).

A. Yes.

Q. What is that?

A. It is what I signed about the $45,000.

Q. Whose is this signature here next to the last page?

A. John E. Beall.

Q. And whose signatures are those at the foot?

A. Mary Ellen Patten, Josephine Antoinette Patten, Edith Agnes Patten, my third sister, and myself.

Q. Do you remember the circumstances of signing that paper?

A. Yes; I remember I was called into my mother's boudoir one morning and she read that paper, whereupon I signed it, and I asked afterwards to have it explained, whereupon my mother told me that through that transaction I got $11,200 and some

386 dollars on account of my father's estate, and she told me then that she owed me $101,600.

Q. What did she say about this being the application towards paying that?

A. She said she was trying to begin and pay on the debt she owed us, but it would take some time, because she wanted to be sure that the investments she had made were certain and good.

Q. I show you this paper (handing witness Complainants' Exhibit R. R. P. Nos. 1 to 13, both inclusive). Do you recognize this?

A. Yes; I do.

Q. What are they?

A. They are Mr. Beall's notes.

Q. Look at the endorsements on the back of Nos. 1, 7, 8, 9, 10, 11, 12, 13, and state if you know in whose handwriting those indorsements are.

A. In the handwriting of my three sisters and myself.

Q. What three sisters?

A. Mary E. Patten, Josephine A. Patten, Edith A. Patten, and Helen Patten—my name.

Q. You were not present when your mother made the transfer of the bonds at the Treasury Department, were you?

A. No.

Q. And you were not present with your sister Josephine on the occasion of opening your mother's box in the safe-deposit company?

A. No; I was not.

387 Cross-examination.

By Mr. GLOVER:

Q. What was done with the bonds, Miss Helen, after Mrs. Glover received them?

A. Mrs. Glover returned them to her mother.

Q. That did not look as if she was very anxious to keep them, did it?

A. She turned to her and asked her to keep them, as she had always kept them.

Q. Mr. C. C. Glover has testified in this case, and Mr. Glover says that your mother said—I will read his testimony. He testified as follows, pages 30 and 31:

"My recollection is that Mrs. Patten told me afterwards that she had put these bonds under her daughter's plate, I think, and she went off and forgot them or overlooked them. That is, I think, the statement she made to me. Q. That her daughter, you mean, went off and forgot them? A. Yes. They were taken to the house, and I think it was intended to represent how little her daughter cared about bonds or thought about money, and my recollection is Mrs. Patten told me her daughter had forgotten the bonds or gone off and left them."

Now, with that statement of Mr. Glover's before you, does it affect your recollection at all as to Mrs. Glover's anxiety to procure this money?

A. I am not at all responsible for Mr. Glover's statement.

Q. You were not present when Mr. Glover made this state-
388 ment that I have quoted of your mother's?

A. I do not think now there was any such statement.

Q. You were present, were you not, Miss Helen, yesterday when the request was made by me that while one witness was examined the others should withdraw?

A. Yes.

Q. You stayed, did you not?

A. Yes; on the advice of my counsel I did.

Q. Was that on his advice or did he leave it to you?

A. Yes; he did, and I chose to stay.

Q. And you stayed and you listened to Miss Josephine's testimony clear through, didn't you?

A. I did.

Q. Now, Miss Josephine says, if I remember correctly, that during this interview between your sister and yourself and Mrs. Glover and your other sisters in the parlor one Sunday evening that I was

asleep in the hall; I think you said that I came into the room, did you not?

A. I said you came into the room after the conversation was over; what you did while it was going on I do not know, but you had a habit of stretching yourself out on the sofa, and I presume you were asleep there then.

Q. Now, having spoken with that degree of asperity, will you please answer the question?

A. I did.

Q. Did I come into the room?

A. I said after the conversation was over you came into the
389 room and you called Mrs. Glover out.

Q. Did you say I came in twice?

A. I did not.

Q. Did not you say that I came in once and afterwards came in and called Mrs. Glover out?

A. No.

Q. Did I call her from the room or from the door?

A. You came into the room and called her out, whereupon you both left the room.

Q. How long did I stay on that occasion?

A. Oh, I cannot say.

Q. I was not asleep then, was I?

A. I don't know anything about your being asleep, but I did not suppose people would stretch themselves on the sofa without going to sleep, especially with a lot of women present.

Q. Miss Helen, is it your idea to say unpleasant things to me or answer my questions?

A. I have answered them.

Mr. GLOVER: I treat you with perfect politeness, both because you are a lady and because you are my wife's sister.

The WITNESS: I have treated you with perfect politeness, but you know you often laid down on the sofa.

Q. The request I make is that you confine yourself to the question.

Q. What were Mr. Stewart and Mr. Upton doing there that night; were they representing you as counsel?

390 A. I have stated before that Mr. Stewart came to us as a friend, knowing that we were entirely alone and thinking we would want some advice.

Q. Was he there as your counsel that time?

A. I don't know anything about it.

Q. Have you had any difficulty with Upton about fees that raised this controversy as to whether you employed him or not?

A. None whatever.

Q. Did Mr. Upton ever render a bill?

A. He never did that I am aware of.

Q. Did Mrs. Glover say that she was paid in full?

The WITNESS: When?

Mr. GLOVER: At the various times you have testified she said she was paid.

A. I do not remember having testified that she said she was paid in full.

Q. I think you said she had received her share.

A. Yes; she said that.

Q. Did she say she had received all of her share?

A. She did not specifically state that.

Q. Did you understand her to remark having received everything coming to her?

A. I understood her that she had received al- the capital that was coming to her from my father's estate.

Q. Capital as distinguished from interest?

391 A. Well, to tell you the truth, I don't know enough about capital or interest to say, but I know my sister never specified anything; she simply said she had received her share.

Q. But you are apparently drawing a distinction between capital and interest.

A. Yes; I know interest comes from capital.

Q. Did she say anything about capital or interest?

A. She said she had received her share from my father's estate.

Q. Did she create the impression on your mind that she had received all of her share?

A. She did; yes.

Q. You subsequently made an affidavit, did you not, that the *that the* estate was still indebted to Mrs. Glover?

Mr. DAVIS: I object to the question unless the alleged affidavit is produced and submitted to the witness.

Mr. GLOVER: I withdraw the question and put it in a different shape.

Q. Do you remember, Miss Helen, filing a petition in the probate court to have your claim allowed?

A. Yes; I think we did.

Q. Well, now, you and your sisters swore to that petition, did you not?

A. If I signed my name to it I did.

Q. I do not mean sign it, but hold up your hand and swear that the contents were true before a notary or some officer.

A. Yes; I think we did.

392 Q. Now, did you say in that petition as follows in paragraph 4: "That by virtue of the premises the estate of the said Anastasia Patten, deceased, now stands justly indebted to Augusta P. Glover to the extent hereinbefore indicated—that is to say, to the said Augusta Patten Glover in the sum of $101,600 as of the — day of September, 1885, subject to the credit of $102,800 as of the 1st of January, 1887"? Do you remember a statement of that kind?

A. Yes; if it is made there I made it.

Q. Well, from my reading it would you remember that you made such a statement whether you did or not?

A. Yes; but you cannot ask me to remember all the papers that have been filed; it is utterly impossible.

Q. According to that statement that you made it—you do not

state that you did not—at the time that this paper was filed, which was May 18, 1889, the estate was still indebted in some amount to Mrs. Glover, was it not?

A. I believe so.

Q. What is your understanding of how it was indebted?

A. I believe some back interest was owing.

Q. Now, this paper, will you look at it and see if your signature is there (handing witness the amended petition for probate)?

A. Yes; that is my signature.

Q. Do you know the other signatures?

A. Yes.

393 Q. Whose are they, if you please?

A. My three unmarried sisters.

Q. Now, there is a statement here to this effect—you remember my reading it to Miss Josephine to the effect that—it is rather long and I don't care to read it unless it is necessary—that Mrs. Patten's interest in the estate was only worth about $94,000, and that it was an undivided interest. Do you recollect having made that statement in this petition?

Mr. DAVIS: The counsel for complainants here inquires whether the statement inquired of by the question is the same as that embodied by the extracts of this petition heretofore read to the witness Josephine A. Patten.

Mr. GLOVER: It is one of them; yes. (To the witness:) Do you remember that, Miss Helen, that there is such a statement in this petition?

A. Yes.

Q. What do you mean by that?

A. I mean that the rest was owed to us.

Q. What do you mean by saying that Mrs. Patten was a part owner or had an undivided interest?

A. What do I mean by it? I don't know what I did mean.

Q. On whose advice did you sign it, Miss Helen?

A. Senator Stewart got it up, I think.

Q. Well, after discussion between you and your sisters and him about the facts?

A. I don't remember the discussion.

394 Q. Now, do you remember the circumstances?

A. There is nothing astonishing in that because I did not pay any attention to the legal affairs.

Q. When you were called upon to sign a paper you saw that you understood it, did you not?

A. Yes; I did.

Q. Do you recollect, in the first place, where you were when you signed the paper?

A. I think it was at our house.

Q. What part of the house?

A. In the library, I think.

Q. And who brought it to you, do you know?

A. I cannot say for sure.

THE LAW ASSOCIATION —OF— PHILADELPHIA.

Q. Well, was it Senator Stewart or Mr. Upton?

A. I really cannot say.

Q. Now, do you remember any circumstance about it—about the signing beyond where you were?

A. No; I do not think I do.

Q. Then you cannot say that you did not understand the purport of it when you signed it, can you?

A. I thought it was all right since Senator Stewart urged me to sign it; it was so shortly after my mother's death that I did not know what they were talking about.

Q. Nearly a month, was it not?

A. A month is a very short time.

Q. A month, was it not?

A. The date is on the paper.

395 Mr. GLOVER: Yes; it is October 10; Stewart did not know anything about this estate except what you told him, did he, you and your sisters?

A. No; I don't think he did.

Q. You did not think he knew it, at least as well as you and your sisters?

A. I do not think he did.

Q. Then he must have gotten the facts from you, chiefly from you and your sisters, did he not? There was nobody else advising you then, was there?

A. No; I don't know of any one else.

Q. Do you remember any discussion about the probability or desirability of Mrs. Glover's wanting and properly agreeing to account for what she had received at Mr. Beall's suggestion?

A. I don't remember any suggestion from Mr. Beall.

Q. And there is another clause in this paper which says that you desire to give a bond. I will read it to you; it is short: "That the said petitioners, together with their said sister, Augusta Glover, are residuary legatees under the said will, and your petitioners desire to give ample security for the payment of all the debts that are due or may be or may become payable from the proceeds of the said estate." Do you remember that clause in the paper?

A. Yes.

396 Q. What did you mean by that; didn't you know that the effect of that would be to relinquish your own claim against the estate?

A. No; I could not have known that.

Q. Well, you knew it meant something when you read it, didn't you? What did you understand by it?

A. I really did not understand much about the law, so I could not explain to you, but I know I never did understand that our claim was extinguished. I always knew the estate owed us so much money.

Q. This is what I mean, Miss Helen. You might be entitled to part of an estate because, for instance, your mother had received from your father a certain amount which was coming to you and invested it in your name. That is one thing. That is that you are

a sort of a part owner. The other thing is where you simply have an ordinary claim against the estate; for instance, if you owed your butcher $50 he could not claim that he had part interest in your estate; he could simply claim a credit against you, and if he claimed he had a part interest in your estate it would not be true. Now, this conveys to my mind, and I think it would to anybody's, the idea that you had an interest in the property, that you were part owner in the property left by your mother, and I want to know what explanation you can give of that language in the petition.

A. I cannot give any explanation of it. Senator Stewart got it up, I think, as far as I know.

397 Q. His name is on it, is it not?

A. You can see for yourself.

Q. Won't you read me the signatures in the corner?

A. William M. Stewart. I cannot read the first part, but W. W. Upton.

Q. Does it not read William M. Stewart and W. W. Upton, solicitors for the petitioners?

A. Yes.

Q. You did not appear in person in the probate court, did you, when this petition was up?

A. I think we did.

Q. Was not Mr. Stewart there with you and Mr. Upton?

A. Yes; I think Senator Stewart and Mr. Upton were present.

Q. Now, Miss Helen, will you be kind enough to give me verbatim and exactly as well as you can the words used by Mrs. Glover when she conveyed to your mind the idea that she had received a payment of a claim that is on account of money she had inherited from her father?

A. The day we read my mother's will in our house on Mass. Ave. Mrs. Glover, after the reading of the will, suggested that the estate should be left as it was and each one of us should check against it.

Q. I remember your giving that full description. Now, what were the particular words she used in saying she had been paid?

A. Whereupon my sister Josephine said we would have to first take out what came from my father, and she turned to Gussy

398 and said, "You have had your share, have you not?" and Mrs. Glover said, "Yes; I have."

Q. That was once, but the other occasion?

A. On another occasion up in my sister Josephine's bed-room Mrs. Glover was present and I was present when she again spoke about the estate and said it should be left together and we should check against it, whereupon my sister Josephine repeated the same words and said, "You have received your share, have you not?" and she said, "Yes."

Q. Now, after it was fully admitted by Mrs. Glover that she had received her share, how did it happen that this thing was said over so many times?

A. Because she seemed to ignore our claim and kept repeating that we should all check against the income.

Q. Now, that is twice. What other occasion, and when was this, in the fall of 1888, the year of your mother's death?

A. This was before she left our house, after my mother's death.

Q. Well, she only remained about a month after your mother's death, didn't she, or less?

A. I think that she did.

Q. Now, what other occasion, Miss Helen, have you to testify to as to her having stated that she had received her share or anything of that kind?

A. One evening Senator Stewart and Judge Upton came to our house—down in the library—and I was present, my sister Josephine was present, Mrs. Glover was present, and Senator Stewart
399 and Judge Upton, and I would not be sure about Judge Clark, but I think he was; yes; I think he was present, because he came to dine with us every evening. Senator Stewart said it would be a very easily arranged estate, because he said there is nothing simpler. He said, "You must first take out what comes to you from your father and you must each pay yourselves," and he then turned to Mrs. Glover and said, "Mrs. Glover, you have received your share, have you not?"

Q. Now, let me ask you, Miss Helen. Your share from your father's estate and your mother's property were all invested in her name, were they not?

A. Yes.

Q. And always had been, had they not?

A. I suppose so. I was too young at my father's death to know.

Q. Do you know of any separate investments in Mrs. Patten's name as guardian of you, Mary, Josephine, or Augusta, or anything of that kind?

A. No, sir; Senator Stewart turned to Mrs. Glover and said, "You have had your share out of your father's estate, have you not?" and she said, "Yes; I have."

Q. Well, don't you remember I asked you a little while ago if she ever said "full share" and you said, "No"?

A. I did not say just now that she said "full share." I said Senator Stewart said, "Have you received your share?"

Q. Didn't you use the words "full share"?

400 A. I may have said so.

Q. I want to know what you said just now. Didn't you say that Senator Stewart said she had received her full share and she said yes?

A. He may have said full share and I may have said full share.

Q. The question is, which is right, share or full share?

A. I can swear that Senator Stewart said, "You have received your share from your father's estate?" and she answered, "Yes."

Q. How did this happen to come up in the same identical language every time. Everybody said, "You have received your full share?" and she said, "Yes." Was a catechism going on like that?

A. I have only mentioned three times. My sister Josephine has testified to the same times.

Q. Now, how many times, if you know, did it occur?

A. I do not remember any other times.

Q. Now, this time in the parlor in the evening was Sunday, was it not?

A. I could not specify the day of the month.

Q. Did you not say Sunday evening?

A. No; I said some evening.

Q. Can you fix the day, the date of any of these talks?

A. I cannot; it was before Mrs. Glover left the house, I know.

Q. That is, it was between the 11th of Sept. and the 12th of Oct. When the amended petition was filed Mrs. Glover was not at
401 the house, was she?

A. I do not remember.

Q. Do you know the difference between stating a thing positively and stating it on information received that some of the documents that you have signed do?

A. Well, I know that when I state a thing positively it is positive.

Q. That is, you mean you know it yourself?

A. Yes.

Q. And when you state it on information and belief somebody has informed you and you believe it to be true?

A. I always understood it to be a legal term.

Q. Did you understand what it meant?

A. I suppose that was what it meant.

Q. You knew a bill of discovery was filed to ascertain the fact about the $45,000 note?

A. Yes.

Q. Did you know that you and your sisters came into court and filed a written statement of the facts?

A. I do not know about coming into court.

Q. Well, you made a written statement to be filed in court, do you remember that?

A. Yes.

Q. In that statement did you say that this alleged payment of $45,000 to yourself and your four sisters you only knew upon information and belief?

Mr. DAVIS: I object unless the paper be shown the wit-
402 ness. I do not know to what the question refers myself.

Mr. GLOVER: It refers to the answer to the bill of discovery, in which the allegation is upon information and belief as to that transaction with Beall amounting to a part payment.

Mr. DAVIS: Counsel for the complainants here offers the counsel for the defendant, for his use, the clerk's office copy of the answer referred to and consents, that it may be used on the examination of this witness with the same force and effect and with the same privileges as though it were the original itself.

(By Mr. GLOVER:)

Q. Referring to the paper handed me by Mr. Davis, I will ask you if you did not use this language in speaking of that transaction, that $45,000 transaction, "That, as they are informed and believe, in or about the month of October, A. D. 1887, the defendant Beall applied to said Anastasia Patten, then in her lifetime, for a loan to him of the sum of forty-five thousand dollars, and offered to secure the same by a deed of trust upon three hundred and eighty-six shares of the capital stock of the Washington Brick Machine Company of the District of Columbia, which stock was then ample security for a loan of said amount, and since said time has continuously increased in value until now the same is worth in open market upwards of one hundred and ten thousand dollars; that, as they are informed and believe, said Anastasia Patten consented to
403 make such loan upon the terms that said Beall should give his own promissory note for the principal amount, payable three years after date, and his twelve separate promissory notes for the amount of interest due each quarter thereof; that at said time, to wit, in the said month of Oct., A. D. 1887, the said Anastasia Patten was largely indebted to these defendants, to wit, in the sum of $101,600 each, with interest from the — day of Sept., 1885, and that in assenting to make said loan it was the purpose and intent of the said Anastasia Patten to make the same on account of these defendants, and to the extent thereof to pay and discharge her said indebtedness, to these defendants, as aforesaid, to the extent of $11,250 on account of her indebtedness to each of these defendants severally." I call your attention to the use of the words "information and belief" there and ask if you knew about it personally, as you claim, and why you said you were informed and believe so and so?

Mr. DAVIS: I object to the question on the ground that the statement in the answer just quoted speaks for itself.

A. I did know about it positively and that is merely a legal term.

Q. But you state other things in the same pleading positively and you state this upon information and belief, as if you were only informed about this from some other person, do you not?

Mr. DAVIS: Objected to, as the paragraph just read or quoted
404 from speaks for itself and will show that the answer purporting to have been on information and belief is confined to the application of the defendant Beall to Mrs. Patten and her consent to make the loan, and the remaining averments in that paragraph of the answer are not made on information and belief.

Mr. GLOVER: I think the construction is different and I will ask the witness to answer the question.

A. No; I do not. I know positively that it was so.

Q. Why did you use the words that you were informed and believed that it is so, instead of saying positively that it is so?

A. I do not think I did use the terms informed and believed.

Q. Now you say that your mother said she was going to try to pay you and your sisters. She could not do it right away or did

not want to do it right away, because she wanted to be sure that her investment would make her all right. Did you say that?

A. I do not think I said my mother said she was going to try. She said she was going to commence and pay, but she had to take time about it, as she wished to make safe investments.

Q. These investments that she made were in her own name, were they not?

A. The note, I think, was in her own name.

Q. All the property that she bought with the money of her wards was in her own name, was it not? That which she bought with the money that was coming to you was put in her own name?

405 She did not put it in your name or Miss Josephine's?

A. She never put it in our name, but she offered to my sister Josephine to put the Glover building in her name and repeatedly in any one of our names, but we told her to keep it, as she could manage it better.

Q. That is true of you and your three sisters who are mentioned in this bill?

A. Yes, sir.

Q. And how long had that been going on? Some years, as well as you can remember? That was the way she did the business?

A. Yes; she always put it in her own name and took care of it. We all knew that and had an understanding that whenever we wanted it we could have it, and we always had the understanding that that much was owed us.

Q. That much of your money was in those investments?

A. I do not know anything about the investments because I never asked.

Redirect examination.

By Mr. DAVIS:

Q. Miss Nellie, in this answer which Mr. Glover has read you make certain statements on information and belief and certain other statements you make without that qualification. Now, for instance, you say on information and belief that Mr. Beall applied to

406 your mother for the loan of the sum of $45,000. Did you know that as a fact, except what you were told?

A. No; except what I was told.

Q. You also say that he offered to secure it by a deed of trust, and so on?

A. That I did not know either, except on information and belief.

Q. You also say on information and belief that your mother consented to make the loan on the terms that Mr. Beall proposed. Did you know that, except from being told it?

A. No.

Q. Now, passing from that, you go and say without qualification that at that time your mother was indebted to you in a certain sum of money. Did you know that positively?

A. Yes; positively.

Q. And so for the rest of these statements that are made without qualification?

A. Yes; those I know positively.

Mr. GLOVER: I object to that because it will have to be determined by a judge what the paper means.

Q. Now, did you tell Senator Stewart anything about your mother's estate—about what it consisted of or how it was held, or anything of that kind?

A. I never did.

Q. Do you know where he got any information he may have had on the subject?

A. I do not know.

407 Q. You were not present at the opening of the box at the safe-deposit company when the agreement of 1885 was first brought up?

A. No.

Q. You do not know anything that occurred there?

A. No.

Q. Do you or not know upon what information Senator Stewart or Mr. Upton, or whoever it was that prepared the amended petition for probate, prepared it?

A. No; I do not.

Q. Was the amended petition for probate explained to you so that you apprehended it at the time you signed it, or what apprehension had you of it? What was its purpose, as you understood?

A. I thought it was to probate the will to settle up the affairs. I did not really know.

Q. You signed the paper with that understanding and purpose?

A. Yes.

Q. And you know as a matter of fact that your sister Josephine was appointed collector?

A. Yes.

Q. And you know she filed an inventory as collector?

A. Yes; I do.

Q. Afterwards there was an inventory filed in which you united as executrix, was there not?

A. Yes.

408 Q. And what do you say as to that inventory setting forth all the personal estate which was in your mother's name or to which she was in anywise entitled or had any interest in? Does that inventory set forth all?

The WITNESS: All that my mother owned?

Mr. DAVIS: Yes.

A. As far as I know, yes.

Q. All that stood in her name?

A. Yes.

Q. Did it or not include all the personal property left by her at the time of her death, so far as you know?

A. Yes, so far as I know.

Recross-examination.

By Mr. GLOVER:

Q. Miss Helen, I forgot to ask you how old you are now?
A. I was born in 1869.
Q. What day of the month?
A. The 11th of Sept.
Q. Then you are over 21 now, are you not?
A. Yes, sir.
Q. You were educated at the Sacred Heart, Paris, were you not?
A. I was.
Q. How many years were you there?
A. I was there from 1876, I think, until 1880.

Q. Do you understand the English language very well?
409 A. Thoroughly.

Q. Now, you have rather intimated, have you not, in reply to Mr. Davis, that you signed this paper without understanding it? Did you mean to convey that idea?

The WITNESS: What paper do you mean?

Mr. GLOVER: This amended petition for probate?

The WITNESS: Have you it there?

Mr. GLOVER: I will show it to you. This paper which speaks of your mother having only an undivided interest in all this property (handing witness paper).

A. I must have understood it at the time; they must have read it to me. I told you before it was only a month after my mother's death, and I did not pay any attention to such matters.

Q. Still it was near a month?
A. I told you yes. A month is a very short time.
Q. It was a month and two days.
A. I suppose the date can show you.
Q. Now, Mr. Davis asks you whether all the property that was left in Mrs. Patten's name was not accounted for in the inventory that was filed and you have answered yes?
A. Yes; I answered yes.
Q. Well, in that inventory that property described in the inventory was brought partly with the money belonging to herself, was it not?

The WITNESS: The property in the inventory?

410 Mr. GLOVER: Yes. It represented your mother's investment of her own money, and also of the money which came from your father's estate, and belonged to you daughters, didn't it? It is all there is, is it not?

A. Yes; I think it is.

HELEN PATTEN.

Subscribed and sworn to before me this 27th day of May, A. D. 1891.

ALEXANDER H. GALT, *Examiner.*

At four o'clock p. m. adjourned until tomorrow morning, April 24th, at ten o'clock a. m.

APRIL 24TH, 1891—10.45 p. m.

Met pursuant to adjournment.

Present: The complainants, Mr. Davis, their counsel, and Mr. Glover, counsel for the defendants.

Whereupon MARY E. PATTEN, one of the complainants, was produced as a witness on the part of the complainants.

Mr. GLOVER: Before she is sworn I object on the ground that she is not competent to testify.

The witness was then duly sworn and deposed as follows:

By Mr. DAVIS:

411 Q. Miss Patten, you are one of the complainants in this case?

A. I am.

Q. Where were you living in 1872?

A. In Gold Hill, Nevada.

Q. Do you remember when your father died?

A. He died on the 16th of November, 1872.

Q. When did you first know that you had any interest in any estate belonging to your father?

A. I have known it ever since my father's death.

Q. Who was your guardian after your father's death?

A. My mother.

Q. How long after your father's death did you continue to reside at Gold Hill?

A. A few weeks only, and then went to San José school.

Q. How long did you live in California?

A. I lived there until I was sixteen years of age, I think.

Q. Which was when?

A. Until 1876.

Q. During the time that you were in California was your mother living with you—the family all living together?

A. No.

Q. Where was your mother living?

A. At the Palace hotel and the Lick house.

Q. Where?

A. In San Francisco.

Q. Were all your sisters at school at San José?

A. Yes.

Q. In 1876, where did you go?

412 A. We went from San Francisco to Europe.

Q. Your mother and all of you?

A. The whole family.

Q. Then, how long did you remain in Europe?

A. From 1876 until 1884.

Q. Was your mother there all the time?

A. Not all the time.

Q. During what portion of the time was she not there?

A. She was there in 1876 until 1877, I think. In 1879 she re-

turned to California; then she returned several times to Europe while we were there.

Q. Well, between the years 1880 and 1884 where was your mother living?

A. In Europe.

Mr. GLOVER: It is understood, I suppose, that all this may be considered objected to.

Mr. DAVIS: Yes.

Q. When did you return to America?

A. I think the 5th of October, 1884.

Q. Your mother and all of you came back together?

A. My mother and my sisters.

Q. When did you come to Washington?

A. In 1884.

Q. Do you know what was the occasion of your mother's returning with her family to America in 1884?

A. It was to arrange to release the guardianship matter in order to dismiss the bondsmen of my father's estate.

413 Mr. GLOVER: I object to that. If she knows the purpose it must be by declarations of Mrs. Patten, which are not admissible. It is understood that I object to any declarations of Mrs. Patten involved in any question or answer. That applies to all questions.

Mr. DAVIS: Yes; past and future.

Q. In what character were these bondsmen of whom you speak?

A. Guardianship.

Q. You mean those who were bondsmen of your mother as your guardian?

A. No, indeed; my mother was my guardian.

Q. I say, do you mean the bondsmen of your mother as guardian?

A. Yes.

Q. How do you know that that was the occasion of your mother returning to America?

A. Because she frequently told us so.

Mr. GLOVER: Same objection.

Q. Well, you lived in Washington in 1884. Have you continuously since then lived here?

A. Yes.

Q. It has appeared in the testimony that at some time in 1885 your mother and the rest of you were at Warrenton, in the State of Virginia.

A. We were.

Q. Do you remember when you went there?

A. I think in September, 1885.

414 Q. How long did you remain there?

A. I think until after Christmas the same year.

Q. Your mother was at that time engaged in building her house, was she not?

A. Yes; engaged in building the house.

Q. Have you any knowledge of her having any consultations with Judge Hillyer in respect of settling her accounts as guardian?

Mr. GLOVER: Same objection.

A. Yes; I have.

Q. What knowledge have you on that subject?

A. She always told us she was very busy coming to Washington to consult with Mr. Hillyer, and one day she came and told us that she and Mr. Hillyer had figures up the amount that was due us coming from my father, and that it was about $101,600. Mama gave us the paper with a slip of paper with the figures on it, and she handed us the two papers and told us we must read them carefully, and, knowing we did not understand the object, she explained to us and said it was the money due us from my father's estate.

Q. Where was this?

A. At the Warren Green hotel, Warrenton, Virginia.

Q. Who were present on that occasion?

A. My three sisters and Mrs. Glover.

Q. And yourself?

A. And myself and my youngest sister, Helen.

Q. And your mother also?

415 A. Yes; and my mother, who left the room then.

Q. Look at the paper now shown you and state if you recognize it (handing witness Complainants' Exhibit No. 5).

A. Yes; this is the paper.

Q. Look at the signatures on the back of the paper and state if you recognize them.

A. I recognize every one. "Signed" was written by Mrs. Glover.

Q. The other signatures?

A. Are Mary Ellen Patten, Josephine A., Edith, and Katherine Augusta, my four sisters; Helen was too young to sign the paper.

Q. Those are the signatures of your sisters and yourself?

A. They are.

Q. Now, when your mother brought this paper to you, what did she do with it?

A. She gave it to us and Mrs. Glover took it and read it aloud.

Q. What then was done with it?

A. And we signed the paper and it was given to mama and put in the safe deposit.

Q. If you know, who gave it to your mother?

A. I think Mrs. Glover.

Q. And until your mother's death in whose custody was it?

A. In the safe deposit; in my mother's custody.

Q. This paper you say was read in your hearing at the time?

A. It was.

Q. And did you or not understand its purpose?

416 A. Perfectly; Mrs. Glover read it aloud.

Q. This paper states that you all four, who signed it, agreed that the payment to each one of you of the sum of $101,600 would

be a full and complete settlement of all accounts, claims, and demands on your part against your mother's estate. Was that sum of $101,600 ever paid by your mother to any one of you?

A. It was paid to Mrs. Glover when she married.

Q. Was it paid to any of the others of you?

A. There was $45,000 paid, $11,250 paid to each one of us; that was the only payment.

Q. I am coming to that presently. What I wish to know now is whether before February, 1887, there was any demand made by any one of you, including Mrs. Glover, upon your mother for this sum of $101,600?

A. No.

At this point Mr. Glover stated that he desired to call the attention of the examiner to the fact that the complainants were conversing constantly while on the stand testifying.

The examiner thereupon requested the ladies to observe his previous injunctions of absolute silence while each was on the stand, and requested that no communication whatever be indulged in.

The ladies thereupon denied the statement of counsel for the defendant.

417 Mr. Davis thereupon stated that he knew they were not talking about the case, because he had especially enjoined that they have no conversation with each other and that they must not pass a word.

He further stated that he had not heard a word spoken and did not think that any was, but he made this statement in view of Mr. Glover's request to the examiner.

Mr. GLOVER: I shall move to suppress all the testimony, on account of the constant communication between the witnesses by words and signs which has taken place between the sisters since the beginning of the examination.

Mr. DAVIS: Lest silence on the part of any one be deemed an acquiescence in the truth of this statement, Mr. Davis, on behalf of himself and each one of the complainants, desires the examiner to note that such is not the fact.

Mr. GLOVER: I shall request that they be excluded from the room if it is continued. (To Mr. Davis:) Have you any objection to suspending the examination until I get another stenographer to take a check on the proceedings?

Mr. DAVIS: I shall object to any such proceeding most certainly, for reasons which must be obvious, and I again repudiate the suggestion that if another stenographer were present there would be anything to be taken down except what is falling from the lips of counsel and the witnesses.

The complainants here changed their positions, so as to
418 avoid the possibility of any communication with the witness on the stand.

Q. Now, Miss Patten, do you remember when your sister, Mrs. Glover, was married?

A. I do.

Q. When?

A. In February, 1884, I think.

Mr. DAVIS: Eighteen eighty what?

The WITNESS: No; in 1887.

Q. Prior to your sister's marriage and after the execution of this paper, which I have shown you, did you or not hear Mrs Glover say anything in relation to her interest in her father's estate?

A. I heard her talk continually about it. Several times she said when she was married if she did not get her money she would ask for it.

Q. Did you ever hear her make any statement about getting her interest in her father's estate before this paper was signed?

Mr. GLOVER: Objected to as leading.

A. She talked continually about the interest she had in her father's estate, and particularly one day in Geneva, in 1882, my mother and some jewels, and when we got in there Mr. Kleinfeldt showed us four diamonds, which my mother said we might have if we paid for them ourselves; whereupon Mrs. Glover said she would and I said I would take them also, and Mr. Kleinfeldt said——

419 Mr. DAVIS: Never mind what he said.

The WITNESS (continuing): —some jewels were much dearer than we went to Mr. Kleinfeldt's, on the Rue de Commerce, to look at the others; whereupon Mrs. Glover said she would take the cheaper diamonds and ordered a palette, in which there were several colored stones and a snake bracelet, she saying, "Since I am paying for it with my own money, I want to get what I want," and these are the bills made out to Augusta Patten and Mary Patten by Mr. Kleinfeldt. You will see the date and all is there (handing to Mr. Davis two papers).

Q. This was in December, 1882, you say?

A. Yes; when we were at Geneva.

Q. While you were in Geneva do you remember your sister speaking of her interest in her father's estate at any other time?

A. She continually spoke of it.

Q. What was the reason, if you know, for her speaking of it, especially while in Geneva?

A. On account of mama saying we could have the diamonds if we wished to spend that much of our own money in stones; whereupon she said she did and we invested, and I took the dear pair and she said, I will take the cheap pair, because when the stones were separated from each other no one would know the difference, and she then ordered a palette.

Mr. DAVIS: You have already told about that. Have you any objection to my putting these bills in evidence?

420 The WITNESS: Not at all; those are the original bills.

Mr. DAVIS: The papers are here offered in evidence by the complainants' solicitor, marked Exhibit M. E. P. No. 1 and M. E. P. No. 2.

Mr. GLOVER: I object to their introduction. They have no relation to the case and are not evidence.

Q. Have you any personal knowledge in relation to the transfer to your sister, Mrs. Glover, by your mother of certain United States bonds in the month of February, 1887?

A. I know that it happened, but I was not present.

Q. How do you know it happened?

A. Because I heard my sister speak of it. I heard my mother say she was going to the bank to get the bonds, but I was not present when they were given to Mrs. Glover.

Q. Did you hear Mrs. Glover say anything at that time about having received them?

A. No.

Q. From whom did you learn of the transaction?

A. From Josephine, who went with my mother.

Q. After the occasion on which, as you say, Miss Josephine went with your mother, did you hear your mother say anything about it?

Mr. GLOVER: Objected to because the declaration- of Mrs. Patten are not evidence in the absence of Mrs. Glover.

A. I heard her say that if it was in her power she would put the money in trust, but as it came from my father as an in-
421 heritance to my sister that was impossible.

Q. When did you hear your mother say that?

A. Several times, and particularly after her marriage.

Q. Did she make this statement in connection with any particular occurrence that you recall?

A. She continually said it, particularly upon rumors that she heard—that we all heard.

Q. Leaving out of the account anything about rumors, have you any recollection of an occasion on which a telegram was received at the house from Mr. Glover?

A. I remember a telegram being received, but I was not present when the conversation took place.

Q. Then, if I understand you, you were not present at any time when your mother may have delivered any bonds to Mrs. Glover?

A. I was not.

Q. Your mother, it appears, died on the 11th of September, 1888, in Portland, Maine, and shortly after that you all came to Washington. Do you remember the occasion of opening your mother's will and reading it?

A. I do.

Q. Who were present at that time?

A. My three sisters, Mrs. Glover, and myself.

Q. I wish you would state what occurred on that occasion as nearly as you remember.

A. The will was opened in the bed-room and read aloud. After the reading was finished Mrs. Glover said if anything hap-
422 pened all of this money comes to us; whereupon Josephine said, "That means up to the date of the will, Gussy," and she

said then, "We will let everything alone and we will take the income;" whereupon Josephine said, "No, Gussy, we won't do that; we will first take out what mama owed us as coming from my father;" whereupon Gussy answered, "You cannot do that."

Q. Well, was anything else said?

A. And then after that we went downstairs.

Q. What, if anything, was said on that occasion as to Mrs. Glover's interest in her father's estate?

A. Well, Josephine said, "You have yours, Gussy?" and she said, "Yes; I have."

Q. Did you hear conversations of that same sort more than once?

A. I heard it another evening in the library; Senator Stewart was present.

Q. Who else?

A. Josephine, Nellie, and myself. Mr. Stewart said——

Q. One moment. Was Judge Upton or Mr. Clark there?

Mr. GLOVER: I object to that as leading the witness.

Q. (Continuing:) Was Judge Upton or Mr. Clark present on the occasion of which you are now speaking?

A. Judge Clark was present.

Q. Was there more than one occasion in the library—if that is where it was, and I believe you have said it was there—when
423 these persons that you have mentioned were present, and the subject of which I am inquiring was mentioned?

Mr. GLOVER: Same objection; leading.

A. I do not remember.

Q. Now, then, on this occasion what occurred?

A. Senator Stewart, thinking that we might need some advice, came to offer his assistance as a friend, he stating that he had read my mother's will, and it was the simplest will he had ever read; the money came to us from my father and my mother, and it would have to be distributed, and that whatever advancement had been made, of course, would have to be deducted. He then turned to Mrs. Glover and said, "You have had yours?" and she said, "Yes; I have." Then Mrs. Glover was in the room a few minutes when Mr. Glover, who had been stretched at full length on the sofa in the hall, came in and called her out, and she went out with him.

Q. Look at the paper now shown you, please, and state if you recognize it (handing witness Complainants' Exhibit No. 7).

A. Yes; I do.

Q. What is that paper?

A. That is the deed Mr. Beall drew up on the occasion of the $45,000 transaction.

Q. Look at the names at the foot of that paper and state in whose handwriting those several names are.

A. (After examining.) In the handwriting of Mary Ellen Patten, Edith Agnes Patten, and Helen Patten, my three sisters, and
424 myself.

Q. What do you say as to those being the genuine signatures of yourself and sisters?

A. I am positive they are.

Q. Where were the signatures attached to that paper?

A. In the boudoir in our house.

Q. Look at the papers now shown you and state if you recognize them (handing witness Exhibits R. R. P. 1 to 13 inclusive).

A. Yes; I recognize them.

Q. What are they?

A. They are the notes of Mr. Beall given us at that time.

Q. This principal note of $45,000 is made to the order of Mary Ellen Patten, Josephine Antoinette Patten, Edith Agnes Patten, and Helen Patten. Who are those four persons?

A. My three sisters and myself.

Q. Look at the endorsements on the bach of that paper—the principal note and state whose endorsements they are?

A. The endorsements of Mary E. Patten, Josephine A. Patten, Edith A. Patten, and Helen Patten, my sisters and myself.

Q. Look at these notes that I now show you (handing witness Exhibits R. R. P. Nos. 7, 8, 9, 10, 11, 12, and 13) and state if you recognize the endorsements thereon.

A. I do.

Q. What do you say as to those endorsements?

A. I know they are the signatures of my three sisters and
425 myself.

Q. What knowledge have you of the transaction evidenced by these notes and this deed of trust?

A. My mother always wishing to——

Mr. DAVIS: Excuse me. Simply state without any preamble what you know about the transaction, without regard to your mother's previous wishes, anything that occurred or was said at the time.

The WITNESS: Mr. Beall came with that deed of trust which was read to us, and he told us we ought to receive $45,000 in $11,250 amounts. Mr. Beall drew up the papers and when he asked my mother if he should put Mrs. Glover's name down she said, No; Mrs. Glover has already received her money.

Q. Who were present when this conversation occurred?

A. Mr. Beall, Josephine, and my mother, and myself and Edith, I think.

Q. Where was Miss Nellie?

A. Miss Nellie was not present.

Q. What, if anything, was said at the time as to the source of the $45,000?

A. My mother said she was making it as a payment of money coming to us from my father's estate.

Q. These notes made to the order of yourself and your three sisters were delivered to whom at that time?

A. They were delivered to my mother, I think.

Q. And to whom was the interest on this $45,000 note paid
426 as it matured?

A. It was paid to my mother, who divided it into whatever it was for us; I do not know what the amount was.

Q. When did you first start keeping a bank account?

A. After this money had been paid to us.

Q. After the transaction with Mr. Beall?

A. Yes.

Q. Where did you open that bank account?

A. Riggs & Company.

Q. Have you ever had in the city of Washington any other bank account than with Riggs & Company?

A. No.

Cross-examination.

By Mr. GLOVER:

Q. When were you born, Miss Patten?

A. The 26th day of November, 1859, as far as I recollect.

Q. Does that coincide with the date named in the will?

A. The will is there.

Q. I am asking you the question.

The WITNESS: If you will show me the will I will tell you.

Mr. GLOVER: I will do so (handing witness the paper). This will says, Miss Patten, "I give, devise, and bequeath to my children, Mary E. Patten, aged nineteen years." The will was dated December 24th, 1879. Were you nineteen at that time?

427 A. If I was born in 1859 I must have been 19.

Q. What wedding present did Mrs. Patten give Mrs. Glover?

Q. She gave her her trousseau and the lace that was on her wedding dress.

Q. Anything else?

A. Her trousseau and the lace that was on her wedding dress.

Q. I say did she give her anything else.

Mr. DAVIS: Objected to as irrelevant and immaterial and not responsive to anything in the direct examination.

A. I do not remember anything else.

Q. Don't you know she did not?

A. I do not remember.

Q. Except these bonds?

A. I do not remember. She never gave her the bonds; that I am positive of.

Q. You were not present when they were handed to her?

A. I was not.

Q. You are simply speaking from what others say?

A. No; what I actually know, that Mrs. Glover inherited those bonds from her father's estate. Her father died in 1872.

Q. You were not present when the bonds were turned over, were you?

A. I was not present when the bonds were turned over.

Q. Then all you know about it is what Mrs. Glover said to you?

A. She never spoke to me about it except to say if she did not get her money then she would ask for it.

428 Q. You testified just now to her having said to you that she had received her share of her father's estate?

A. She always said that.

Q. Did that refer to the bonds?

A. Certainly it did.

Q. Then she did say something about the bonds?

A. She said it in that way, if you consider that speaking about the bonds.

Q. I am trying to get at what you consider.

A. I considered that that money came from my father.

Q. I am trying to elicit your own knowledge of the transaction. You were not present at the interview between Mr. Beall and Mrs. Patten in regard to the $45,000-note transaction at your house, were you?

A. I was present in the boudoir when the transaction took place.

Q. Do you know of any other interview between them, or, rather, have you testified to any other interview between them other than the one in the boudoir at the house?

The WITNESS: If you will read that testimony it will show.

Mr. DAVIS: Answer the question.

The WITNESS: I cannot understand the question he is asking.

Q. Where is that slip of paper on which the figures were that you spoke of?

A. It is in the custody of Mr. Davis.

429 (Counsel for complainants here handed counsel for defendants the paper desired.)

Q. Are these the papers to which you refer, Miss Patten?

A. They are. They are figures made by Judge Hillyer.

Q. You say that this paper signed by yourself and your sister in 1885 was kept by your mother in the safe-deposit box. How do you know that?

A. I always knew it was there.

Q. How did you know it; did you ever see it there?

A. No.

Q. Then how do you know it?

A. Because I knew that all the papers of my mother were in the safe-deposit box.

Q. Is that the way you know these other things that you have testified to?

A. I do not know.

Q. You say that this paper of 1885 you perfectly understood?

A. Certainly I did.

Q. Look at this paper, if you please (handing witness the amended petition for probate). Did you also understand that paper when you signed it?

A. When I signed that paper I thought it was an appropriate paper under the circumstances to be signed.

Q. Did you understand it when you signed it?

A. I understood it; yes. I suppose I did.

Q. You made affidavit to that paper, didn't you?

430 A. I did.

Q. You notice your name signed to it there?

A. Yes.

Q. Sworn to before a notary, is it not?

A. Yes.

Q. What do you mean by making a statement in that paper under oath that you were part owner of the estate left by your mother?

A. I mean that I had an interest in the estate because my mother owed me $101,600.

Q. Well, if I owed you some money would you swear that you had an interest in my estate?

A. I would have an interest until you paid me.

Q. The same kind of an interest you had in your mother's estate?

A. No; I don't think it was the same.

Q. Now, didn't you mean that you were a partner of your mother?

A. No; I did not.

Q. What did you mean, simply that you were a creditor?

A. Yes; my mother owed me $101,600 from my father's estate.

Q. That is all you meant by that paper?

A. Yes.

Q. Where were you when you signed it?

A. At my house.

Q. Who else were present?

The WITNESS: When I signed this paper?

Mr. GLOVER: Yes.

431 A. I do not remember.

Q. What consultation did you have with your attorneys about the paper?

A. I do not remember.

Q. Will you please look at this paper, the original petition (handing witness original petition for probate)—will you be kind enough to look at it, as I wish to call your attention to some difference in the language of the two papers; have you examined it?

A. I have.

Q. Do you notice there anything about your mother owning a one undivided interest in this property which came into your hands as executrix?

A. I do not see anything about undivided interest.

Q. In the first paper, in the original petition, the one you have, do you see anything about an undivided interest?

A. No.

Q. Why did you put it in the second paper and not in the first?

A. I do not remember.

Q. How much was the property worth that your mother left?
A. I do not remember.
Q. Well, you signed the inventory, didn't you?
A. If you will produce the inventory I will tell you.
Q. Will you be good enough to give an approximate value of the personalty?
A. I cannot; I do not remember the exact figures.
Q. Will you approximate—$10,000 or 1,00-,000?
432 A. I think it was about $95,000.
Q. The whole estate?
A. The personal property.
Q. You think the whole estate was worth about $95,000?
A. Yes, deducting what my mother owed us.
Q. What was the whole worth? That is the question.
A. That I do not remember.
Q. You inventoried it all as her property, all afterwards, didn't you?
A. Yes.
Q. There was about $500,000 of it, was there not?
A. I do not remember.
Q. Altogether, you do not remember?
A. I know that each one of us, my three unmarried sisters—my mother owed each one of us $101,600.
Q. You have stated that heretofore. I am asking you now what is the valuation of all the personal property of the estate under your inventory as executrix?
A. I do not know the exact figures.
Q. Was it not about $500,000?
A. I do not remember the figures.
Q. Do you remember the figures approximately? Do you know what approximate means?
A. I do.
Q. Do you remember the figures approximately?
A. I would not care to say the figures, since I do not remember them.
433 Q. Will you come as near to it as you can, if you please?
A. I cannot give the figures because I do not remember them.
Q. You profess to remember a conversation *with* occurred between you and your mother four years ago—three or four years—don't you; six years ago, 1885?
A. I do.
Q. You are interested equally with the four sisters in the estate of Mrs. Patten, are you not?
A. I am.
Q. And you mean to say you have no idea of what the personalty of that estate was appraised at?
A. I have an idea, but I do not remember the exact figures.
Q. I want you to state the figures as nearly as you can.
The WITNESS: You mean the personal property?
Mr. GLOVER: The personal property; yes.

A. I think it was about four or five hundred thousand dollars.

Q. Now, why did you make affidavit in this paper that your mother's interest in that was only $94,000?

A. Because I deducted the debts that my mother owed us as coming from our father's estate.

Q. Why did you deduct that claim against the estate and swear that you were part owner?

A. I do not know.

Q. You have received a first-class education and understand the English language, have you not, Miss Patten?

The WITNESS: I refuse to answer impertinence.

434 Q. You were educated at the Sacred Heart, were you not?

A. I was.

Q. I do not mean to be impertinent; I would not for the world; I simply want to know your idea of the meaning of that paper. Now, you understand English thoroughly, don't you?

The WITNESS: I refuse to answer.

Q. You speak French and English both, Miss Patten?

Mr. DAVIS: These questions are objected to as irrelevant and immaterial, but I request the witness to answer them as the shortest way.

A. I do.

Q. Then you had no difficulty in reading and understanding this paper, did you, when you signed it?

A. I did not.

Q. It is no more difficult to understand than the paper of 1885, is it?

A. I do not know.

Q. When your mother died, Miss Patten, what investments did you find in the name of the wards made by her—what property invested in the name of Anastasia Patten, as guardian for Mary Patten, Josephine Patten, Edith Patten, and Helen Patten?

A. I did not find any in their names.

Q. There was none, was there?

A. Except the $45,000 that was ours.

Q. Except those notes?

435 A. Yes.

Q. You remember making an inventory, do you not, as executrix?

A. Yes.

Q. That entire property was purchased partly with your money and partly with your sisters' money and partly with your mother's money, was it not? She used your money as ward and that of your three sisters and her own in buying this property, did she not?

A. Yes.

Q. Well, did you have that in mind when you testified she was a part owner—when you made an affidavit that she was only one-half owner?

A. I do not remember testifying that she was only part owner.

Q. I mean in the amended petition, in which you have said the decedent's undivided share, meaning your mother, that you put in the inventory was only worth $94,385.65.

The WITNESS: I do not understand the question.

Q. When you made that statement did you have in mind the fact that this property was purchased partly with your money and your sisters'?

A. Of course I knew the property was purchased with my money.

Q. Was not that what you had in mind? Does not that explain the petition?

A. She had our money.

Q. And invested yours and hers alike. Is not that so?

A. Yes.

436 Q. Now, was not that what you meant when you said, taking in view the amount of your money that had been invested and your sisters', that her share would only be $94,000?

A. Because we deducted our share from that.

Q. Now, if you had simply had a claim against the estate—a grocery bill or something of that kind—you would not have undertaken to say that you had an undivided interest in the property only because your money was invested—was it not or was it?

A. I do not know.

Q. Do you know what undivided share means, Miss Patten?

A. I do.

Q. What does it mean—that you all own it together, does it not?

A. The money was ours, invested by our consent by my mother.

Q. In this property?

A. No; all the property that our money was invested in.

Q. Now, I am asking you whether it was not that fact that induced you to sign this paper which said that your mother had an undivided share.

A. I do not remember.

Q. You say you do know what an undivided share is, Miss Patten?

A. I do.

Q. Some of this real estate is here in undivided shares, is it not?

A. It is.

437 Q. Now, you know what the words "undivided share" means as applied to the real estate, don't you?

A. I do.

Q. Didn't you use them in the same connection here—the same construction and same meaning?

A. The money that belongs to us must be deducted. My mother used to be making good investments with our consent.

Q. That is an argument, but what I want to know is—you are the eldest of these daughters, are you not?

A. I am.

Q. Then you ought to be qualified, if anybody is, to explain its language.

Miss JOSEPHINE PATTEN: May I make an objection? Mary never took an interest——

Mr. DAVIS: Please, Miss Patten——

Mr. GLOVER: Put that down, please. I will ask another question.

Q. You are the eldest of all the children, are you not?

A. I am.

Q. Mrs. Glover is the next?

A. Yes.

Q. Miss Josephine next?

A. No.

Q. Who next?

A. I had a brother.

Q. I mean of the living children?

A. She is.

438 Q. Miss Edith next?

A. Yes.

Q. And Miss Helen next?

A. Yes.

Q. Well, you have stated that you knew what an undivided interest in the real estate is, and that you and your sisters and Mrs. Glover for the present each held such undivided interests, did you not?

A. Yes; I believe so.

Q. Did you use the words "undivided share" in this petition in that sense?

A. I do not remember; I do not know.

Q. Well, if you used it in any sense, just state what that sense was.

A. I do not know how it was used in that petition; I do not remember enough about this paper to explain.

(Handing witness the paper.)

Q. You can read the language, can you not?

A. I do not understand enough about the petition to explain.

Q. I want you to state in what sense you used the words "undivided share" there.

A. I said I did not know anything about the papers; I did not take enough interest in it at the time to remember how it was used.

Q. Now, why did you not take enough interest in it?

A. Because it was so soon after my mother's death.

Q. Were you not consulting counsel, inquiring of Mrs.
439 Glover and holding daily and nightly discussions over this money within three days after your mother's death?

A. I was not.

Q. When were these interviews held at the house between Mr. Upton and Mr. Stewart?

A. I do not remember.

Q. Didn't you begin to discuss the business part of the question before you left Portland?

A. I never discussed it until you forced me to do it by asking me each day of the week if I would go to the safe-deposit company with you, and when I didn't go you asked me to write him a note and ask him to go, saying the business should be settled before going to California.

Q. I want to know—I want to treat you with perfect courtesy, both because you are a lady and my wife's sister—I want to know, however, what Mrs. Glover is entitled to know: what the meaning of this important document was, as you understood it at the time?

A. I understood it was to facilitate matters and have the estate settled.

Q. But you would not swear to a statement that you did not understand on the theory that it was going to facilitate matters, would you?

A. I thought it was an appropriate paper to be signed at that time.

Q. What do you mean by undivided share?

440 A. I did not understand enough about the paper; I did not take enough interest in it at the time to be able to explain.

Q. Why didn't you take interest in it?

A. I told you why.

Q. You mean to explain that you did not understand the first paper that was filed for probate on the 3rd of October; you did not understand that either?

A. I understood that it was to probate my mother's will—a petition to the court to probate my mother's will.

Q. This first paper, Miss Patten, states that each of the undersigned petitioners is a citizen of the United States and a resident of the city of Washington and District of Columbia. You understood that, didn't you, when you signed it?

A. Yes.

Q. That Anastasia Patten, late a citizen of the United States and resident of the city of Washington aforesaid, departed this life at Portland, Maine, on or about the 11th of September, 1888. You understand that, do you not?

A. Yes.

Q. That the said Anastasia Patten died seized and possessed of both real and personal property of great value; that is perfectly plain. Do you know what seized and possessed means in that sense?

A. Yes.

Q. She made her last will and testament. You understand the meaning of that?

441 A. I do.

Q. Used the word "heirs." You know what that means?

The WITNESS (to Mr. Davis): Mr. Davis, do I have to answer these questions?

Mr. DAVIS: Yes; answer the questions.

A. I do.

Q. Now, this amended petition for probate. Is this statement in

the affidavit part of it? "Mary E. Patten, being duly sworn, deposes and says: I have read the foregoing petition and know the contents thereof." Then you must have known the contents at the time, did you not?

A. At the time I did.

Q. At the time you did understand it?

A. I understood as much as I could of it, but, as I told you before, I did not take enough interest in these papers to know much about them.

Q. There had been quite a discussion going on before this paper was filed about this matter between you and Mrs. Glover, had there not?

A. I do not remember.

Q. Have you not testified to a part of that conversation between you and Mrs. Glover?

The WITNESS: Between me and Mrs. Glover? I do not understand what you mean.

Q. Have you not testified to a conversation between you and Mrs. Glover at the family residence between the death of your mother and the time she left?

442 A. I remember Mrs. Glover saying in the library, if that is what you mean.

Q. You know what I mean by the question, whether you have not had the conversation with her about this business matter before the filing of this petition.

A. I do not remember when that petition was filed.

Q. That petition was filed October 10, your mother died September 11, there was about a month's interval, and Mrs. Glover had left the house, had she not, before this petition was filed?

A. I do not remember when she left.

Q. That is not an answer to my question. You have offered yourself as a witness and we are entitled to ask you questions. As the witness does not seem to understand the question, I will repeat it. You say you did not take any interest in this paper because of your mind not being clear, I infer at that time, thinking of other matters and your loss, and so on, and I have asked you whether from the time of your return to Washington from Portland up to the 10th of October, when this paper was filed, you had not been consulting attorneys and advising with them and discussing this matter with Mrs. Glover.

A. Mr. Stewart came to us as a friend, and we spoke to Mr. Stewart and Judge Clark both as friends.

Q. What do you mean by friends; was he not like any other lawyer, except that you did not pay him?

A. He was not like all lawyers.

443 Q. He was a very able man, was he not?

A. He was.

Q. He gave you the full benefit of his advice as far as you wanted it?

A. He did.

Q. He was a lawyer, was he not?

A. He was.

Q. He advised you on the legal phases of the matter, didn't he?

A. Yes.

Q. I think you draw a distinction there, having a man who was your friend simply?

A. Because he was not employed as a lawyer.

Q. He acted as your lawyer, did he not?

A. He came to us as a friend.

Q. He acted as your lawyer, did he not?

A. I believe he did.

Q. I will put the question this way: Have you not consulted Mr. Stewart and Mr. Upton?

A. No; we did not consult Mr. Upton. Mr. Stewart came to us as a friend; there was nothing said as a lawyer; we said nothing about it.

Q. Did you know Mr. Upton before he came to your house at the time you have described?

A. I do not remember.

Q. Was he not there as a lawyer?

A. No; he was brought there by Senator Stewart.

444 Q. For what purpose?

A. I never asked him.

Q. You do not mean seriously to say that those men were not acting as your attorneys at the time, do you?

A. I know we never employed them as attorneys at the time.

Q. They were acting without being employed?

A. Acting as friends, giving us advice.

Q. What kind of advice?

A. Whatever kind they thought we needed.

Q. Legal advice?

A. It was not all legal.

Q. Some of it legal?

A. I do not remember; all I know is that he came as a friend, never acting as a lawyer.

Q. Will you be kind enough to tell me what you understand by a lawyer who gives you advice but simply acts as a friend as distinguished from Mr. Davis, for instance, who I assume is employed in the regular way?

A. One is employed in the regular way and the other is not.

Q. They do the same service, do they not?

A. I do not know.

Q. Will you be kind enough to look at the signature of this amended petition for probate in the right-hand corner and state what you see there?

A. (After examining.) William M. Stewart, W. W. Upton, solicitors for petitioners.

445 Q. That follows your signature on the paper, does it not?

A. It is on the side of my signature.

Q. The same page?

A. The same page.

Q. Then these gentlemen unquestionably acted as your solicitors, did they not?

A. I do not know.

Q. You do not know whether in filing that paper and signing it they acted as your solicitors?

A. I do not know.

Q. You know what a solicitor is, do you not?

A. I do.

Q. What is it? A lawyer, is it not?

A. Some lawyers are solicitors; some are not.

Q. Then you understand the difference, do you, between a barrister and a solicitor?

A. I do.

Q. You learned that in England, did you not?

A. I do not remember where I learned it.

Q. But you are confident now that these gentlemen were not only your solicitors, but they were solicitors as distinguished from attorneys?

A. Mr. Stewart was my friend; came as such to me and acted as such for me. Mr. Upton was brought by Senator Stewart.

Q. For what purpose?

A. I never asked him.

Q. We will leave that branch of the subject for a moment.

446 This paper says, this affidavit of which I have read you a part, made before Mr. Evans, notary public, that the facts therein stated of my personal knowledge are true—that is, stated in the petition are true—and that the facts therein stated on my information and belief I believe to be true. Now, you state in this paper upon your personal knowledge that Mrs. Patten's, your mother's, interest in all the property that stood in her name at her death was only worth a little over $94,000; that her undivided share was worth $94,000. Now, I ask you again what you meant by undivided share.

A. I meant that after deducting what came to us from my father's estate that much money was left which ought then to have been divided among all of us.

Q. Well, if you had a claim against me and I were to die, would you swear because you had a claim against me that you owned a part of my estate, or that I only had an undivided share in it after deducting your claim as creditor?

A. I do not know.

Q. Now, did you not say to Mrs. Glover at one time at the house there between your mother's death and the time she left the house, some time in October, that John E. Beall said that all she had to do to make the thing straight was to sign a paper agreeing to account for the money she had received?

A. I did not.

447 Q. You never said anything of that kind?

A. I positively never did.

Q. Do you know John E. Beall?

A. I know him.

Q. He was around there offering assistance, advice, &c., was he not?

A. He was not offering advice.

Q. He did not act for you at all in any way as attorney?

A. No; not as attorney.

Q. Do you not remember that in the Bostwick partition case he signed his name as your attorney? Do you not remember signing a petition at his request shortly after Mrs. Glover left your house—a paper at his request, the partition of Kalorama? You know what a petition is, do you not?

A. I do.

Q. Don't you know that he signed a paper for you there and came to Mrs. Glover at the Richmond to get her to sign it also?

A. I have a recollection of it.

Q. Then he was advising you?

A. He was acting as our agent.

Q. I thought you said he was not around there at all.

A. I do not know what you mean by coming around there.

Q. I mean coming there; if he came there during this time.

A. That I do not remember.

Q. This was during that time, the signing of that paper?

A. I do not remember.

448 Q. He was your agent, was he not?

A. In some matters he is yet.

Q. He collects your rents now, does he not?

The WITNESS (to Mr. Davis): Mr. Davis, shall I answer this?

Mr. DAVIS: Yes.

The WITNESS: He does.

Q. He did at that time, did he not?

A. I believe so.

Q. He came there frequently about a number of business matters, did he not?

A. I do not remember.

Q. Now, this paper—this note—that you say was a payment to you in October, 1887, you never got your hands on at all until January, 1889, did you?

The WITNESS: What paper do you refer to?

Mr. GLOVER: These notes.

A. I do not remember what date it was.

Q. How could that be a payment to you in 1887 which you did not get hold of until 1889—this $45,000 note?

A. It was a payment to us.

Q. How could it be when it did not come into your possession at all until two years after?

A. It came into our possession——

Q. After Mrs. Patten's death, did it not?

A. Not at all; we had the notes before.

Q. When?

449 A. I do not remember the date.

Q. Give us the best——

A. I do not remember; I think it is on the deed. (To Mr. Davis:) Where is the deed, Mr. Davis? (Referring to paper:) In October, 1887.

Q. The notes came into your possession then?

A. The interest. We had the interest from the time the transaction was made—as soon as they were due—and the interest was paid to my mother, who immediately transferred it to us.

Q. But she kept possession of the principal and interest notes during her life, did she not?

A. They were in the safe deposit.

Q. In her box?

A. Yes.

Q. And you have testified in answer to the bill of discovery—you know what a bill of discovery is?

The WITNESS: Mr. Davis——

Mr. DAVIS: Answer the question.

A. I do.

Q. Very good; but you do not know what an undivided share is?

A. I have answered that before.

Q. Well, will you answer it yes or no? My recollection is you declined to answer.

A. I do not remember.

Q. Which way do you answer now? Do you know what
450 an undivided share is?

A. Of course I know what an undivided share is.

Q. Please state something of which you own an undivided share at present, so as to illustrate—your mother's real estate, for instance. You own an undivided share of your mother's real estate, do you not?

A. Some of it.

Q. That means that you own part and your sisters own part, does it not?

A. I believe so.

Q. Now, while the interest was paid to you the notes were kept by your mother in the box, both the principal and interest notes, were they not?

A. They were.

Q. Until after her death, when Miss Josephine withdrew them from the box as collector?

A. They were always in the safe deposit, as far as I recollect.

Q. What day were these bonds delivered to Mrs. Glover, do you know?

A. The day before her marriage, or about that day.

Q. Where; at the family residence?

A. At the family residence.

Q. In whose presence?

A. In the presence of Josephine, Edith, and my mother.

Q. You were not present?

A. I was not.

451 Q. Then how do you undertake to say what was done?

A. Because I have heard it several times.

Q. That is not evidence, I think. I want to know just what you know yourself.

A. I was not present when they were delivered.

Q. This bill of Kleinfeldt is not receipted, Miss Patten, is it?

A. No; but I think we have a receipted bill.

Q. Was the bill paid?

A. The bill was paid.

Q. By your mother?

A. By my mother for my sister Augusta and myself.

Q. And you had the jewelry?

A. We had the jewelry.

Q. Got it yet?

A. Yes; I have. I do not know what Mrs. Glover has.

Q. That bill was $8,000.

A. It was $8,000 franks, if you read it correctly.

Q. Oh, yes; reduced it somewhat. This bill of Augusta's was 5,715 francs?

A. If that is on the paper. (Handing witness paper). Yes.

Q. That was paid, was it not?

A. It was paid.

Q. And you and your sister took the property?

A. Yes; we did.

Q. Now, will you just be kind enough to advise me again just exactly in the language what was said at that time by Mrs. Glover?

452 The WITNESS: At that transaction?

Q. Yes.

A. My mother told us we could have these jewels if we wished them and would pay for them with our own money; whereupon Mrs. Glover said she would take the cheapest, as when they were separated no one would know the difference; she then said she wished to order a palette of variegated stones and a serpent bracelet.

Q. Who was present?

A. I was present; my mother and Mr. Kleinfeldt, and I think Josephine and Edith.

Q. And Mrs. Glover?

A. Of course she was present, as she did the talking.

Q. Anybody else?

A. I think the clerks in Mr. Kleinfeldt's jewelry store.

Q. Did you say that Mrs. Glover said anything about demanding her money if she was not permitted to purchase these jewels?

A. She said at the time if she did not get it she would ask for it.

Q. I think, Miss Patten, you misunderstood my question. Did she say at this interview at Kleinfeldt's that when she was married she would demand her money?

A. No.

Q. Nothing was said there?

A. No; nothing was said about marriage.

453 Q. Was there any friction or any trouble about getting money; your mother let her have it if she wanted it, did she?

A. Any time we wanted money we asked for it.

Q. There was no occasion, then, for her to make any threats about demanding her money when she was married?

A. She always made those threats.

Q. Did she make them then?

A. Not at that time, she did not.

Q. There was no occasion at that time for her making any such statement, was there?

A. No; she was not thinking of marriage then.

Q. When did you hear for the first time that Mrs. Glover proposed to demand her full share of the estate with the others?

A. I do not remember exactly; but it was very soon after my mother's death I heard there was to be some trouble.

Q. From her? When did you hear from her for the first time?

A. One night when you staid out all night long and I insisted upon putting the burglar-alarm on the house and you sent a messenger boy at 12 o'clock at night and I went down to get the telegram for Mrs. Glover and when I was gone she went into where Edith was——

Mr. DAVIS: Don't tell anything but your own knowledge.

The WITNESS: She said she would go to law because Mr. Glover could not sleep in the room that was given him in the house.

454 Q. There was no bath-room there. You do remember, do you not, that there was no bath-room?

A. The last room you occupied there was not.

Q. No; the room I occupied at that time. Now, I suggest that it is unnecessary to bring me into these matters. I can defend myself if necessary. Now, having made this diversion, just go back and state, if you please, when Mrs. Glover first said to you that she would demand her full share of the estate.

A. She never said it to me.

Q. When you first learned it, then?

A. I learned it from hearsay.

Q. When? I am not asking you what she said, but when.

A. When you were still in the house.

Q. How soon after your mother's death?

A. Very soon.

Q. Perhaps a day or two?

A. I do not remember.

Q. It might have been a day or two, might it not?

A. I do not know.

Q. Have you not been inquiring with your face of your sisters?

A. I have not.

Q. I am mistaken then. It might have been two days?

A. It might have been the very day, for all I know.

Q. Very good. You say the day the will was opened Mrs. Glover said, "You cannot do that." What did she mean by that?

455 A. Because Josephine said she would first take out of the estate what was coming to us from my father, according to the agreement drawn up by Judge Hillyer, $101,600, and Gussy immediately said, "Oh, you cannot do that." Those are the words she used.

Q. What else did she say?

A. She said to leave the estate as it was and use the income, whereupon Josephine repeated what I said before.

Q. How often did you see Messrs. Stewart and Upton between the 11th day of September, 1888, and the 10th day of October, 1888?

A. I do not know.

Q. Were you at the safe-deposit building the day the box was opened?

A. I was not.

Q. Were you not in the carriage outside?

A. I was not.

Q. Which of your sisters was there?

A. I do not know.

Q. Did you see Mr. Stewart, perhaps, every day during that time?

A. I do not remember.

Q. Do you remember asking me to go to Senator Stewart's with Mr. Clark to confer with him?

A. I do not.

Q. Do you remember an interview held between Mr. Clark and myself and Senator Stewart at his house about that time
456 about this difficulty?

A. I do not.

Q. Don't you remember yourself pointing out Clark to me in the yard and asking me to go with him up to Mr. Stewart's?

A. Positively never.

Q. You are positive?

A. I am positive about that.

Q. Do you remember speaking to me at all during that time?

A. No.

Q. You do not remember speaking to me at all?

A. No.

Q. You are equally positive that you did not speak to me at all?

A. To the best of my knowledge I did not speak to you during that time.

Q. During the whole month?

A. I do not remember the whole month, but I know I had just as little to say to you as I could.

Q. That was kind. Do you remember my sitting one morning in the dining-room with you——

A. I do not.

Q. I had not gotten through—you might remember—and my saying to you if there was anything I could do I would be glad to do it, and you said you were going down to the safe deposit?

A. I remember your begging me every morning to go with me to the safe-deposit box.

457 Q. Every morning?

A. Every morning; every time you saw me.

Q. How many times did I see you?

A. Every time in the morning. You got up and went out at five o'clock in the morning sometimes.

Q. How do you know?

A. The burglar-alarm went off.

Q. Do you testify that because the burglar-alarm went off?

A. I testify because I heard you holler out loud in the hall to "Col. Mack," your dog.

Q. And the burglar-alarm went off?

A. Yes.

Q. I must have asked you some twenty times to go to the safe-deposit company's?

A. I do not remember.

Q. How many times, ten times?

A. I do not remember.

Q. Was it no times?

A. Not at all; several times.

Q. Are you not mistaken?

A. I am not mistaken; I am positive about it.

Q. Did Mrs. Glover say in these interviews with you that she had received all that was coming to her from the estate?

A. She said it in the library. Senator Stewart asked her if she had received her money and she said she had.

458 Q. Did she say she had received all?

A. She said she had received what was coming to her from my father.

Q. Did she say all?

A. I never asked her about all. She said she had received what was coming to her.

Q. Did you understand her to mean all?

A. I do not know.

Q. Why did you make an affidavit that the estate was still indebted to her?

A. It was indebted for some interest.

Q. Did she say she had received all except some interest?

A. I never heard her speak of that.

Q. It was still indebted for some interest?

Q. Interest from September——

Q. You remember making that statement, do you, in your pleading?

The WITNESS: What is that?

Q. That the estate was still indebted to her.

A. It was indebted to her for interest.

Q. Did you say interest?

A. I do not remember anything about that.

Q. Do you remember making a statement under oath that the estate was still indebted to her, and that was after this time?

A. I do not remember.

Q. There was no pleadings at this time, were there?

459 A. I do not remember.

Q. When did you tell Mrs. Glover about this $45,000 being a payment to you?

A. I never told her.

Q. Did you ever tell her that all your mother had given you was some interest on some notes of John E. Beall?

A. I never told her anything about it.

Q. Never discussed it with her?

A. Never.

Q. At all?

A. Not at all.

Q. Why?

A. Because it was my own personal business.

Q. You kept it a secret?

A. She never told me what she did with her business, and I never told her mine.

Q. You kept that a secret?

A. It was no secret. They were my own personal notes. I never asked her what she did with her bonds, and there was no reason why I should tell her.

Q. You are aware that she tried very hard for a while to find out about that transaction, are you not—I mean after your mother's death?

A. I believe I have some recollection of something of the kind.

Q. She did not get any information, did she?

A. I do not know.

460 Q. You do not know whether she did or not?

A. No.

Q. You do not remember anything, do you?

A. Yes; some things.

Q. You remember that she had to file a bill of discovery to get the information, do you not?

A. Yes.

Q. You answered that, did you not?

A. I believe so.

Q. That was the first information, was it not, about the facts of the transaction?

A. I believe it was.

Q. Why did you not give it to her before?

A. Because I did not consider it was any of her affair.

Q. Well, the court decided that it was her affair, did it not?

A. I do not know.

Q. You applied to remove Mrs. Glover, did you not?

A. We did.

Q. What did you do that for?

A. Because she did not wish to act justly or do what she ought to in matters of the estate.

Q. According to your judgment?

A. According to my judgment and that of my three sisters.

Q. Do you remember a letter being written to Mr. Davis about the time you filed the inventory asking Mr. Davis to state or,
461 rather, refusing to sign the inventory until he did state for you, whether you claimed this $45,000 as a gift or as an advancement or as a payment?

Mr. DAVIS: I object to the question as irrelevant and immaterial and not responsive to the direct examination, and as being an interrogation about an alleged paper the existence of which is not shown or any knowledge on the part established. You can show her any such paper. I have here a copy of a letter to me, and if that be the paper referred to I have no objection to the use of the copy for the purposes of the examination.

Mr. GLOVER: I will ask a new question. Have you examined the printed copy of a letter appearing in a record of the supreme court of the District of Columbia, printed on page 22, marked Exhibit A?

A. I have.

Q. Do you remember that letter?

A. No.

Q. You do not remember anything about it?

A. No; nothing about it.

Q. You do not remember its being referred to you by Mr. Davis, asking you what should be done about it?

A. I do not remember anything about it.

Q. Is your memory bad, Miss Patten—your general memory?

A. I do not think so.

Q. You think it is good, do you?

A. Yes.

462 Mr. GLOVER: I will embody this letter in the question.

Mr. DAVIS: What is the date of it?

Mr. GLOVER: April 16th, 1889.

Q. Do you remember a letter addressed to Mr. Davis by me as follows:

"WASHINGTON, D. C., *April* 16, 1889.

Henry E. Davis.

MY DEAR SIR: Referring to your letter to Mr. Davidge of April 16th, I am directed by Mrs. Glover to say that she has as yet no sufficient information to enable her to say that the indebtedness with which the deed of trust in the hands of Mr. Snyder is connected should not be inventoried as assets of the estate. It is in your power to furnish this information. Referring me to a deed of trust which you advise me in the same breath is not recorded, or showing Mr. Washington a nondescript paper, which you refuse to let him copy, is not furnishing such information as the occasion requires.

Mrs. Glover directs me to ask that the original deed of trust in the hands of Mr. Snyder be submitted to the inspection of Mr. Davidge, with liberty to make a copy, and that if the young ladies

claim the property as a gift from Mrs. Patten that they personally advise her of that fact and of the time and circumstances thereof.

Until proper information is furnished her upon this point
463 you can see at once that she cannot sign any inventory which either excludes or omits this property.

Yours, very truly, JOHN M. GLOVER."

Does that refresh your recollection?

A. It does not.

Q. You know that demands were made for information at that time?

A. I have some recollection, but nothing about that letter.

Q. You may also have a recollection that you refused to give it, have you not?

A. I never refused to give it.

Q. Did you not refuse to give it in reply to this letter?

A. I do not recollect anything about that letter.

Q. Did you not give it; have you not just said that you never gave it until the bill of discovery was answered?

A. I do not know about that letter; I do not know about when the information was given.

Q. Now, immediately after this letter, you applied to remove Mrs. Glover, did you not?

A. I do not remember when that letter was written. I know we did apply to remove Mrs. Glover.

Q. Well, and the court did not remove her, did it?

A. I believe not.

Q. Are you in any doubt on that point as to whether it removed her or not?

A. I believe not.

Q. Don't you know it did not?

A. I believe not.

464 Q. Don't you know it did not?

A. I believe not.

Q. Don't you know it did not.

A. I believe not.

Q. Did you not say just now you did not know anything about it?

A. I said I believe not.

Q. Don't you know the court did not remove her?

A. I said I believe not.

Mr. GLOVER: That is not an answer, Miss Patten.

The WITNESS: That is my answer.

Mr. GLOVER: Is that all the answer you deign to give? I mean for an answer yes or no.

Mr. DAVIS: Be kind enough to give an answer.

The WITNESS: I said I believed not, Mr. Davis.

Q. Do you not know that she was not removed and that she is now executrix?

A. I think she is executrix now.

Q. Don't you know she is?

A. I believe she is.

Q. Are you in any doubt about it?
A. No.
Q. Then why do you say you believe?
A. Because I am in no doubt about it.
Q. Then when you say you believe you mean you know, is that it?

465 Mr. DAVIS: I object to this examination as wholly irrelevant, immaterial, and unnecessary. I instruct the witness to answer the questions as the best way of saving time. (To the witness:) Miss Patten, be kind enough to answer Mr. Glover's questions as promptly and as decidedly as you can.

Q. Do you not know that she is executrix now and was not removed?
A. I know she was and has not been removed.
Q. Now, Miss Patten, after the failure of the movement to remove Mrs. Glover you filed your answer to the bill of discovery, stating the facts about these notes, did you not?
A. I believe so.
Q. Do you remember a statement in that answer to the effect that you considered her request for a copy of the deed of trust as impertinent?
A. No.
Q. Now, if this transaction was all perfectly fair, as represented, and was really a payment, what objection could you have to letting Mrs. Glover know the facts?
A. The same objection I would have to telling anybody of my private, personal business.
Q. Did she not claim it to be assets of the estate; was that your personal business?
A. The $45,000 transaction was.
Q. Did she not claim it to be assets of the estate?
466 A. I do not know.
Q. And was it not in Mrs. Patten's box when she died?
A. It was.
Q. How could she know the facts unless you told them to her?
A. Because there was no need of her knowing the facts.
Q. She was an executrix just as you were?
A. Of my mother's estate, money that belonged to her.
Q. She was claiming it for your mother's estate, was she not?
A. I believe she was.
Q. Do you not think as executrix she was entitled to the information?
A. I do not know.
Q. What did you think about it at the time?
A. I thought it was none of her affair.
Q. Is it not a fact that up to the time you filed your claim as creditors against the estate of Mrs. Patten—that is, May 10th, 1889—that all the discussions about this question in controversy between you and Mrs. Glover was about an advancement; that you were not claiming to be creditors at all, but you were claiming that this

$45,00- had been given you as an advancement; she had been advanced and the thing ought to be equalized; is not that so?

A. No; we have always been creditors.

Q. And is it not also a fact that during that time you claimed this $11,250 simply as an advancement?

467 A. We never claimed anything as an advancement; we claimed it as money due us from my father's estate.

Q. And is it not also a fact that the reason why no information was given about this note was that you and your sisters had not made up your minds when you filed that petition whether you would claim that it was a part payment or an advancement?

A. Positively no.

Q. Then what other reason did you have for concealing it so assiduously?

A. We had no reason. It was our personal property.

Q. Now, did you not also conceal from Mrs. Glover the assets of the estate—that is, the list of the notes?

A. We did not.

Q. Do you remember an application to you by Mrs. Glover or anybody representing her for a list of the notes of the estate?

A. I do not.

Q. John E. Beall made you a list of notes, did he not?

A. I do not remember.

Q. Well, try and think.

A. I do not know.

Q. You heard your sister Josephine's testimony the other day, did you not?

A. I did.

Q. You were here. Did you hear her testify about a list of notes that John E. Beall made?

468 A. I do not know.

Q. Cannot you remember from yesterday or the day before a thing of that kind?

The WITNESS (to Mr. Davis): Mr. Davis, do I have to answer?

Mr. DAVIS: Yes; answer, please.

A. I can remember from one day to another.

Q. Then why cannot you remember that, or is it that you do not want to remember?

A. I perhaps did not hear it.

Q. Do you say you did not hear it?

A. I do not remember.

Q. You do not remember whether you heard it or not? If you cannot remember what happened yesterday or the day before, how can you remember what happened five years ago?

A. Because I was interested very much in what happened five years ago.

Q. You were interested in coming down here to listen to that testimony, were you not?

A. No.

Q. Why did you come, then?

A. Because I thought I had rather be here.

Mr. GLOVER: Well, as I cannot get any answers out of the witness, I will close.

Mr. DAVIS: I desire to know if I am to understand that the cross-examination is closed.

Mr. GLOVER: Yes, sir.

469 Redirect examination.

By Mr. DAVIS:

Q. Miss Patten, after your mother's death and down to the appointment of Miss Josephine as collector, how much, if any, participation did you have in any business matters relating to your mother's estate?

A. I did not have any.

Q. How about your other sisters?

A. Josephine did most of it.

Q. Now, you were asked whether your mother made Mrs. Glover any wedding present, and you have said that she gave her her trousseau and also some lace. Do you know your mother's feeling about Mrs. Glover's marriage?

A. She seriously objected to it, and one day told——

Mr. DAVIS: Never mind. I have only asked you that. Now, with reference to this amended petition for probate, do you know who prepared it (handing witness paper)?

A. I do not know. I think it was Senator Stewart.

Q. Do you remember when you first saw it?

A. No; I do not.

Q. Do you remember where you first saw it?

A. It must have been at the house.

Q. Do you know Mr. Evans, the notary, whose name appears on it?

A. I do not.

Q. Do you remember the fact of making oath to this paper, where it occurred?

470 A. It must have been at the house.

Q. Without regard to whether it must or must not, have you any memory as to where it did occur?

A. No; I have not.

Q. The first paper, the original petition for probate, appears to have been filed on the 3rd day of October, 1888, and the amended petition on the 10th day of October, 1888. Do you remember anything occurring between these two dates that caused the filing of the amended paper?

A. Mrs. Glover refused to sign one of the papers.

Q. Was that the reason?

A. That was the reason, I think, as far as I can remember.

Q. It appears that Mrs. Glover did not sign the amended petition, but what I wish to know is whether any fact was brought to your knowledge or discussed, so far as you now recollect, by your sisters

or yourself or by Judge Upton and Mr. Stewart and yourselves that led to the filing of this second paper.

A. I do not remember. She refused to sign anything.

Q. That was afterwards. See if I can refresh your recollection about it. Do you remember any discussion being had at any time in connection with the probate of your mother's will in which the subject of the bond and its amount was mentioned?

A. I remember the day that Mr. Stewart asked my sister Gussy if she had received her money, and she answered yes, and Mr. Stewart then said to her she would have to have a bond, and
471 if she had a bond Mr. Glover would have to join in the bond. She answered, "That will be all right. He may get it."

Q. Besides that, or with that exception, do you remember any discussion or mention of the size of the bond, as to its being great or small?

A. I also understood Mr. Glover wanted a small bond because he could get nobody to go on his bond; that is what I understood.

Q. In what connection did you hear that said?

A. Mr. Stewart was trying to arrange about the executrices, if we would all go on as executrices or not.

Q. It was in that connection, was it?

A. I think so, so far as I remember.

Q. I wish to ask you further, by way of refreshing your recollection, if I can—I do not know what the fact is myself—whether there was any talk about your interest in your father's estate or in the property left by your mother as affecting the question of the amount of the bond.

A. I do not remember.

Q. Upon what information, if you know, was this amended petition prepared? Did you give the information on which it was prepared?

A. No; I do not think so.

Q. Do you know who did give the information?

A. I think it was prepared by Senator Stewart. I do not know who gave the information.

Q. During her lifetime and after your father's death I
472 understand you to say that your mother invested all the moneys that were in her possession, whether her own or as guardian for you daughters, in her own name?

A. She did.

Q. With the exception of this $45,000, is that correct?

A. Well, until Gussy married that is correct; that was in her own name, too, until she gave it to us—the interest.

Q. Well, with the exception of this $45,000?

A. That $45,000 was ours.

Q. One moment. With the exception of $45,000 which was invested in the manner evidenced by these papers and the $85,000 in bonds which were transferred to Mrs. Glover just before her marriage, all the property or moneys or whatever it was that came from your father's estate was invested by your mother in her name?

A. Yes.

Q. Where did these conversations in Geneva take place, the one of which you have testified?

A. Mr. Kleinfeldt's office, I think, in the Rue de Commerce.

Q. That was about the jewels, but I mean where was it that Mrs. Glover spoke about having her money. Was that at the jeweler's? My question is where.

A. I do not know.

Q. It didn't take place at the jeweler's, did it?

A. The conversation I told you about took place there.

Q. But I mean the conversation in which Mrs. Glover spoke about her money.

473 A. *Owe*, she spoke about it continually.

Q. Did she or not say it in the jeweler's?

A. She didn't say it in the jeweler's.

Recross-examination.

By Mr. GLOVER:

Q. You were asked in connection with the wedding present how Mrs. Patten regarded your sister's marriage with me and you stated that she objected to it.

A. My mother objected to it seriously.

Q. And that was the reason that she gave your sister no wedding present, was it?

A. She gave her the trousseau and the lace on her dress.

Q. How long did I know your sister before I married her?

A. I do not remember.

Q. About six months, was it not?

A. No.

Q. Don't you know that the statement that you have just made is deliberately untrue?

A. I do not; my mother spoke to all of us about it.

Q. Didn't your mother agree that I should marry your sister before I spoke to your sister? Don't you know that she agreed to my marriage with your sister before your sister agreed?

474 A. She never agreed to it at all; she told Gussie to do what she pleased about it, to go and do what she thought right to do. My mother said, It is a serious thing to do. She said, "I am old enough to know what I am doing."

Q. Did you hear that said to Mrs. Glover?

A. I heard it.

Q. Then your statement is that your mother made no wedding present?

A. I said the trousseau and the lace on my sister's wedding dress.

Q. And that is your recollection of giving her a wedding present; is it?

A. I say she gave as a wedding present the lace and the trousseau.

Q. The trousseau is always given, is it not?

A. Not always.

Q. Your mother was a lady of wealth?

A. If my mother had not objected so seriously to the wedding she might have given something else.

Q. Is there anybody whose testimony is above suspicion whom you can refer to, friend of the family?

A. She spoke to no one out of the family, but she spoke at Seabright to Dr. Mooney, and I can give you his address.

Q. That was after the marriage?

A. She told him that Gussy had made a mistake.

Q. On the ground of her being too young, was it not?

A. She said nothing about age; Gussie said herself she was old enough to know what she was doing.

Q. Which friend of the family did she tell at that time that she objected?

475 A. She spoke to Dr. Mooney at Seabright.

Q. No; at the time——

A. You know yourself that general reception in our family was not that of an accepted brother-in-law by the family.

Q. Didn't I get along with your mother better than you?

A. You did not.

Q. You did not speak to your mother for three months before she died, did you?

A. I positively refuse to answer such a statement; I positively deny it.

Q. Didn't Mrs. Patten say to you many a time that you made her life a burden to her, and that she wished you would leave the house and get married?

A. I positively deny such a statement.

Q. The night of the wedding was it not said and discussed that the bonds were a wedding present?

A. It was not; you started it by putting it in the newspaper.

Q. You know that just like you know the other, do you not?

A. I heard it from several people.

Q. Why do you say you know it?

A. Because I know that we were the only people besides Judge Hillyer who knew anything about our affairs.

Q. How about the transfer of the registered bonds in the Treasury Department? Do you not know that it came out in the Washington newspapers on the 18th of February direct from the

476 Treasury Department, and is not your statement a falsehood about my having done it?

A. I do not know. We did not give it to the press, and the Treasury Department did not know about it.

Q. Why do you state upon oath that I did it?

A. Because I don't know anybody else who would be interested in it.

Q. That is a sufficient reason for making a statement under oath that I did it, is it?

A. I say you were the only person who had enough interest in it to make such a statement.

Q. The first time your sister ever went to the theatre alone with a gentleman she went with me, did she not?

A. And my mother seriously objected and told us that she did not know that she was going to be alone in the box with you until Mrs. Judge Field told her so.

Q. Were you not present when we asked Mrs. Patten's permission to go to the theatre and she gave it?

A. No; I was not.

Q. Do you remember my driving alone with Mrs. Glover?

A. And my mother seriously objected to it and spoke to her about it when she came back.

Q. Do you not know that in your presence we asked her permission and got it?

A. I do not. I know that the night you went to the theatre my mother got ready and was going *and was going* with you, but you never asked her to go. Gussie said she was going to the
477 theater. It was not our custom to go to the theater alone with any man.

Q. Unless your mother is willing that you should marry him. Don't you remember sitting in the library, what we call the library, at your house where I asked Mrs. Patten and she agreed that I should take the present Mrs. Glover alone to the theater?

A. No; I do not.

Q. How long was it after I knew Mrs. Glover before I married her?

A. I do not remember. I was not at all interested in it only to try and have her not marry you, perhaps.

Q. You were interested to that extent?

A. Yes; because I did not approve of you as a brother-in-law.

Q. The point is whether you have made a false statement about objecting to the marriage as explaining the absence of the wedding gift.

A. I said my mother gave as a wedding gift her trousseau and the lace upon her dress.

Q. Had a very large wedding, did we not?

A. That was my sister's desire because she said you were in Congress.

Q. Was it not your mother's desire?

A. It was not.

Q. You invited people from all parts of the country, did you not?

A. Because you furnished her with a list 80 pages long, I think; people who, afterwards I heard, you had never met.

478 Q. Eighty pages long?

A. I heard so; it was a brown book.

Q. Now, as a matter of fact don't you know that the invitations that I gave for the wedding did not exceed twenty?

A. I do not know anything about your invitations. I know that you gave that book with a numerous list of people.

Q. You said there were eighty pages?

A. I said I did not know how many pages, but there was a brown book which was filled with written addresses.

Q. You know Cyrus Field was invited here from New York, do you not?

A. I do not.

Q. Mr. Clark, from Montana?

A. I know we invited Mr. Clark.

Q. Of your old friends in California?

A. I do not know if they were invited.

Q. Now, who were your mother's friends at that time in Washington?

A. I do not know.

Q. Mrs. Jones was one?

A. I do not know.

Q. You don't know whether Mrs. Jones was a friend of your mother's?

A. I know that Senator Jones had been my father's friend and our friend.

Q. Don't you know that after our marriage Mrs. Patten was at our house so much that you complained of it?

479 A. No; I do not know that.

Q. Did she ever come down there?

A. I do not know.

Q. Was she not there nearly every day?

A. No; she was not. I know that Mrs. Glover was a great deal at our house.

Q. Is it not a fact that she was there a very little?

A. It is not; I saw her there nearly all the time, so much so that my mother said, "Gussie, you ought to take care of your house."

Q. Then your statement is that Mrs. Patten made no wedding present because she objected to the marriage?

A. I said my mother made a present of the lace and the trousseau and that she seriously objected to the marriage.

Q. Now, did she tell you anything about them—anything about her objections, if she had them, to the marriage?

A. She always said——

Q. You did not speak to your mother a dozen times in six months, did you?

A. That is an untruth.

Q. Will you leave it to Mrs. Glover—that statement?

A. I will leave it to no one; I know that it is an untruth.

MARY E. PATTEN.

Subscribed and sworn to before me this 26th day of May, A. D. 1891.

ALEX. H. GALT, *Examiner.*

At this point a recess was taken until 1.45 p. m.

480 APRIL 25, 1891—two o'clock p. m.

Session resumed after recess.

Present: Mr. Davis, solicitor for the complainants; Mr. Glover, solicitor for the defendants; the examiner, and—

EDITH A. PATTEN, one of the complainants and a witness produced and offered as a witness on behalf of the complainants.

Mr. GLOVER: I object to the witness being sworn on the ground that, being a distributee and interested and being a party to the record, she is not competent to be sworn.

The witness was thereupon duly sworn according to law, examined, and testified as follows:

Direct examination.

By Mr. DAVIS:

Q. You are one of the complainants in this cause and are the sister of the other complainants, I believe?
A. I am.
Q. Do you remember your father's death?
A. I do not.
Q. So that you do not know the date of it of your own knowledge?
A. I have heard it.
Q. I say that you do not know it of your own knowledge?
A. No.
Q. It has appeared in testimony here that you, with your sisters, were in Europe from 1876 to 1884?

481 Mr. GLOVER: I beg your pardon, Mr. Davis. Mr. Forrest not having been here before, I would like to suggest that it is agreed between us that all objections for irrelevancy, immateriality, and incompetency are considered to be taken to every question without special objection. Is that right?
Mr. DAVIS: Yes.

Q. Do you know the occasion for the return of yourself and your sisters and mother to this country?
A. Yes, sir.

Mr. GLOVER: It is also understood, I believe, that the declarations of Mrs. Patten are objected to, whether involved in questions or stated in the answers. That is right, Mr. Davis?
Mr. DAVIS: Yes; that is right.

WITNESS (continuing): As we were not very anxious to return to America, my mother said that we must come because she had to come to America to discharge the bondsmen—discharge the men who were our bondsmen for her guardianship—relative to her guardianship of the children's property.
Q. In respect to what estate was your mother guardian?
A. My father's.
Q. What do you mean by that?
A. That my mother was my guardian and the guardian of my sisters.
Q. In respect of what?

482 A. Of what was left to us by my father.

Q. Well, when did your mother return with you to this country?

A. In 1880.

Q. I mean when did she return with all of you?

A. In 1884.

Q. Do you remember when you reached America?

A. Yes, sir.

Q. When?

A. In October.

Q. When did you come to Washington?

A. About the same year.

Q. Now, to go back a little in point of time. When did you first know that you had any interest in the estate left by your father?

A. Well, I knew it when my mother said she had to go back to discharge her bondsmen, and I knew it in Geneva.

Q. When did you know it in Geneva?

A. I knew it in Geneva when my sister Gussie said to my mother that she had money in her own right and could pay for her own things, and my mother said then that if she wanted her money she could have it and see how long she would keep it.

Q. Do you remember the occasion of that remark by Mrs. Patten?

A. Yes; it was on account of something my sister wanted.

Q. What year was that?

483 A. That was in 1882.

Q. And you say you came to Washington in 1884. Have you resided here ever since?

A. Yes.

Q. Your mother, it appears, was in Warrenton, Virginia, some time in the year 1885. Do you remember that?

A. Yes.

Q. Now, there has been put in evidence in this case the paper which I now show you (handing witness Complainants' Exhibit No. 5). Look at that paper, please, and state if you recognize it.

A. I do.

Q. Do you know the signatures on that paper?

A. I do.

Q. Well, whose are they?

A. They are the signatures of my sisters, Mary Ellen Patten, Katherine Augusta Patten, Josephine Antoinette Patten, and my own, Edith Patten.

Q. Under what circumstances was this paper prepared, if you know? Do you know who prepared it?

Mr. GLOVER: It is also understood that all the testimony of this witness which goes to establish the declarations of Mrs. Patten is objected to as incompetent under the statute.

A. It was prepared by Mr. Hillyer—Judge Hillyer.

Q. And under what circumstances was it presented to you to be signed?

484 A. My mother came back from Washington and brought the paper with her. She gave it to us with two other small papers with figures written on them and told us that Mr. Hillyer and she had gone over everything carefully and had come to the conclusion that that was the right amount for us to receive from our father's estate, and if we did not think so and if we did not understand the paper clearly that we could get any lawyer that we wished to examine it and rectify anything that we did not think was right. She then left the room and Mrs. Glover picked up the paper and read it aloud and signed it, and when we all signed it Mrs. Glover picked the paper up again, went over to the window, and re-read it to herself.

Q. What was done with the paper?

A. It was handed to my mother when she came back.

Q. Do you know in whose custody it was from that time until your mother's death?

A. I knew nothing more about the paper until I knew of it from my sister Josephine.

Mr. GLOVER: I object to anything that her sister may have told her.

Mr. DAVIS: Don't state anything that your sister said to you.

A. I was going to say that it was in the safe-deposit company: it amounts to the same thing.

Mr. GLOVER: I object to that as giving the declarations of Miss Josephine Patten which are not competent.

485 Q. This paper signed by you and your sisters mentions the sum of $101,600 as being the sum to be received by each one of you in full and complete settlement of your interest in your father's estate, and so on. Was that sum ever paid to you or to any one of your sisters?

A. Yes; it was paid to Mrs. Glover when she married.

Q. Well, has that sum been paid to you or to your sisters who are co-complainants with you?

A. No, sir; but my mother said that it would be, but she was looking for safe investments for us, and therefore it would be paid to us at different times.

Q. Do you remember when your sister, Mrs. Glover, was married?

A. In February, 1887.

Q. Well, on what day?

A. On the 21st or 22nd.

Q. Have you any knowledge of any transaction between your mother and Mrs. Glover at that time in respect to Mrs. Glover's claim upon her father's estate or interest in her father's estate?

A. Yes, sir.

Q. Prior to this transaction had you heard—did you hear—Mrs. Glover say anything; and, if so, what in reference to her portion of her father's estate?

A. Mrs. Glover repeatedly said to me that if her money was not given to her when she was married that she would ask for it, and

a few days before she was married I was in the room with
486 her——

Q. Before we come to that, did your mother say anything on the subject?

A. My mother also repeatedly said to myself and to my sisters that she wished to transfer Mrs. Glover's bonds to her name before she asked for them.

Q. Well, on the day of the occurrence, tell us what happened.

A. On the day of the occurrence I was in the room with Mrs. Glover when Josephine came back, and Mrs. Glover asked her where she had been, and she said that she had been to the Treasury. She said, "What did you do there?" and she said, "Mother has transferred your bonds to your own name." She said, "How much?" and Josephine said, "Eighty thousand dollars." She said, "That is not enough," and Josephine said, "Well, only for me you would have had but seventy-nine thousand dollars," and that "mama had figured it right." Then Mrs. Glover said that she thought that mama ought to make it a round hundred thousand dollars, and Josephine said, "No; that would be too much, would it not?" and Gussie said, "Yes, that would be a hundred and twenty thousand dollars, or something very near that," and then we three left the room and went downstairs to breakfast.

Q. What time did you breakfast?

A. The usual hour, between twelve and half past twelve.

Q. In the day?

487 A. Yes, sir.

Q. After breakfast what occurred?

A. After breakfast I came up as usual with my mother, because I was nearly always with her, and I walked into the other room, and my mother said to Gussie, who was coming up the steps, "I want to speak to you," and Gussie came to the door. My mother stood at the door, and I could see her. She stood toward the bureau, and I saw my mother, but I could not see Mrs. Glover. I saw her hand Mrs. Glover a package and say to her, "I thank God your father in heaven can see me today give you your bonds."

Q. What did Mrs. Glover say?

A. Mrs. Glover handed them back to my mother and said, "Take them and keep them for me, as you have always done," and then Mrs. Glover went, I do not know where, and my mother came in, and a second afterwards my sister Josephine joined us in the room. Both of us sat on the sofa, and my mother came up and said, "I feel easier now, because if Mr. Glover had asked for the money she would have taken the bonds."

Q. You speak of your sister as Mrs. Glover. She was not at that time married, was she?

A. No, sir; fortunately.

Q. Well, besides your sister, who is now Mrs. Glover, and whom I will now call Mrs. Glover for identification, and your mother, who were present in the room or within your vision at that time?

488 A. My sister was not in the room, but standing at the door; the door was open between her and myself. I could not see

her, but I could see my mother; at least, I could not see Mrs. Glover's figure, but I could see my mother hand her a package and I saw her hand it back to my mother, who took it and put it in her cedar closet, which is right opposite, and she turned around and spoke.

Q. I understand, then, that there was no person present besides Mrs. Glover, your mother, and yourself that you saw?

A. No, sir; no one had been up in the room.

Q. You say that your sister came afterwards; which sister?

A. Josephine; she could not have been very far off, because she came in a second afterwards.

Q. You do not know of your own knowledge where she was at the time?

A. No, sir.

Q. Did either of your other sisters come upon the scene?

A. No, sir.

Q. What became of Mrs. Glover after this occurrence?

A. I dare say she went to her room, which was on the next floor.

Q. Do you know?

A. No.

Q. Did she come into the room or remain where she was, or did she go away?

A. She went away.

Q. With reference now to your mother's death. That occurred on the 11th day of September, 1888?

489 A. Yes, sir.

Q. And you all came to Washington shortly after that time. It has developed here in the testimony that your mother's will was opened and read. Were you present on that occasion?

A. I was.

Q. I wish you would state what occurred, if you remember it.

A. The will was read, and after the reading my sister—at least Mrs. Glover—made the remark that if anything happened to us all this money went to them, and Josephine took the will up and read it all over again; and something was said about the time it went into effect, and she said it was in effect now, and then Mrs. Glover said, We will leave the estate altogether and check against the income. Whereupon my sister Josephine said, "That will do very well after we have received what you have already received from my father's estate; you have taken it out." Josephine said to her, "You have received yours, have you not?" And she said, "Yes; I have," and Josephine said, "Have you got it; have you got your bonds yet?" and she did not speak; and then Josephine said, "It is too bad if you have not, because they are much higher now."

Q. What, if anything, was said as to what was to be done with your sisters' shares?

A. She said that we could not take it. My sister said that we would, and then she says, "Oh, but you cannot do it; it will have to be given to you," and Josephine said, "There is nobody

490 to give it to us; there is nobody left to give it to us, and we have to take it ourselves," and then she said that we would have to get a lawyer.

Q. Is that all the conversation, as you remember it?

A. And I think, then, that she recommended Stewart.

Q. Is that all that you remember?

A. That is all that I remember, and then we all went downstairs together.

Q. Did you hear the subject of your sister's receiving these bonds mentioned on any other occasion than the one you have described?

A. No.

Q. I mean was the subject mentioned at any other time after your mother's death than the occasion that you have just spoken of?

A. Oh, after the death; no; but before, when they were sent to St. Louis, we heard of it.

Q. Were you or not present on any occasion when——

WITNESS (interrupting): No, sir; I was not present.

Mr. DAVIS: Wait a moment. Were you not present on any occasion when the matter was a subject of remark, when Senator Stewart and others were present?

A. No, sir; I was not present.

Q. With regard to the forty-five-thousand-dollar matter, which was mentioned in the pleadings. Look at the paper now shown you and please state if you know what it is (handing the witness Complainants' Exhibit No. 7).

A. Perfectly.

491 Q. I wish you would see if you perfectly recognize it.

A. I do. I recognize it.

Q. Look at the foot of the paper and please state in whose handwriting those signatures are.

A. Mary Ellen Patten, Josephine Antoinette Patten, Edith Agnes Patten, and Helen Patten.

Q. Do you remember when and where you signed this paper?

A. Yes, sir.

Q. When and where?

A. My mother called me into her boudoir, and when I went in I stood at the table near her. Mr. Beall was writing at the writing desk and he turned for a minute and asked my mother whether he should put Mrs. Glover's name there, and she said, "No; Mrs. Glover has nothing to do with this; she has received hers; this money belongs to the girls."

Q. What, if any, explanation was made at the time as to the character of the transaction?

A. It was something about notes and brick stock.

Q. You spoke of some notes. Look at the papers now shown you and state if you recognize them.

A. Yes, sir.

Q. What are they (handing witness Exhibits R. R. P. Nos. 1 to 13, inclusive)?

A. Yes, sir; I recognize them.

Q. Look at this Exhibit R. R. P. No. 1. To whose order is that made payable?

A. Mary E. Patten, Josephine Patten, Edith A. Patten,

492 and Helen Patten.

Q. Look on the back of that paper. State if you recognize the indorsement.

A. I do.

Q. What is your sister's right name?

A. Mary E., instead of Mary H.

Q. Look at the indorsements on the back of that note and state in whose handwriting they are.

A. Mary E. Patten and Josephine A. Patten.

Q. I call your attention to a mistake made at the time of filling out this.

Mr. GLOVER: Let it appear on the record that the witness Mary E. interrupted by saying that her name was Mary E. and not Mary H.

Mr. DAVIS: Which interruption Mr. Glover desires to have noted.

WITNESS: That was a mistake made at the time.

Q. Look at the papers now shown you (exhibiting to the witness Exhibits R. R. P. Nos. 7, 8, 9, 10, 11, 12, and 13) and state in whose handwriting are the indorsements on the same.

A. Mary E. Patten, Josephine A. Patten, Helen Patten, and my own.

Q. Now, this forty-five thousand dollar note is made payable to the order of yourself and your three unmarried sisters, and each one of the interest notes is also made payable to the order of
493 the same. Were or were not those notes placed in your possession at the time they were executed?

A. They were not. They were kept by my mother, and we always received the interest.

Q. You know what that transaction was?

A. Yes, sir.

Q. What was it?

A. My mother was commencing to settle with us on account of the money that was due us from our father's estate.

Q. How do you know that?

A. Because she told me that she was. She told me that she would do it, and she was commencing to do it. She told me that she was looking for safe investments for the money.

Q. When did she tell you that?

A. The day that I signed the paper.

Q. You mean this paper that has already been shown you?

A. Yes, sir.

Q. In point of fact you have received interest on this $45,000 note since it was drawn?

A. My sister and myself have received the interest.

Q. The notes have all been paid, I believe—the $45,000 note and all—have they not?

A. I do not think that they have.

Q. You were to get of the $45,000 $11,250, being $45,000 divided by 4?

A. Yes, sir.

Q. Do you not know that within the last few days the
494 $45,000 note has been paid in full? Do you or not know that?

A. No.

Cross-examination.

By Mr. GLOVER:

Q. Miss Edith, you were present a few days ago when the examination of Miss Josephine was taken, were you not?

A. Yes, sir.

Q. And you heard a request made that yourself and your sisters should withdraw while Miss Josephine was being examined, did you not?

A. Yes.

Q. And you declined to withdraw, did you not?

A. No.

Q. Did not Mr. Davis leave it to the young ladies to determine whether they would withdraw or not and did you not stay?

A. I did exactly what Mr. Davis said, and I thought that was right.

Q. Do you mean to say that Mr. Davis asked you to remain?

A. No, sir; he asked me if I cared to, and I said yes.

Q. You did remain?

A. I did.

Q. And you listened to Miss Josephine's testimony, all of it, did you not?

A. No; I was not here during all of it.

495 Q. You were here the first time, were you not?

A. Yes.

Q. And then when Miss Helen was put on the stand you heard her testimony?

A. No.

Q. You did not?

A. Not all of it; no.

Q. You heard Miss Mary this morning, did you not?

A. Yes; I did.

Q. All of it?

A. All of it.

Q. Now, will you be kind enough to state to us again just where you were standing, where Mrs. Glover was standing, and where your mother was standing when these bonds were given to Mrs. Glover?

A. I was standing by the bureau.

Q. In what room?

A. In my mother's room.

Q. You mean by that the room towards Twenty-second street, in the second story?

A. I mean my mother's room; yes.

Q. Was that your mother's room?

A. Yes; it was my mother's room.

Q. You were standing by the bureau?

A. In front of the bureau.
Q. In what part of the room?
A. Almost in the middle.
496 Q. In what part of the room was that bureau?
A. Very near the door; right near the door; somewhat near the door.
Q. Just behind the door?
A. Just behind the door, as the door opened in.
Q. Where was your mother?
A. Half behind the door, on one side opposite the cedar closet.
Q. Half behind the door and half in front of it?
A. She was standing in such a way that I could see half of my mother.
Q. Where was the cedar closet in the room?
A. Right opposite where my mother was.
Q. Did you see the wall of the room?
A. I did not. The same wall near the bureau?
Mr. GLOVER: The same wall near the bureau.
A. No, sir.
Q. And this was in front of the bureau?
A. Not in front of the bureau, but in the corner of the room—other part of it—on the side of the door.
Q. Was it a double door?
A. Yes; a double door. Do you mean the door between the boudoir and——
Mr. GLOVER (interrupting): I mean the door between the hall and your mother's room. You say that is a double door?
A. Yes.
497 Q. Please explain what you mean by a double door.
A. It opens so (indicating).
Q. There are two wings to the door?
A. Two wings to the door.
Q. Now, where was Mrs. Glover at the time?
A. Standing on the threshhold of the door.
Q. More out of the room or in the room, which?
A. About equal.
Q. Then Mrs. Glover and your mother were about on the same side and you were on the opposite side?
A. I was on the opposite side, but I was standing so that I could see. I could see Mrs. Glover's hands and my mother's fingers and hands.
Q. How far away were you from your mother?
A. Not far; I was very near. I was nearer than I am to that table (indicating).
Q. Did you see Miss Josephine from where you were standing?
A. I did not.
Q. Now, how did it happen that that transaction took place on the threshhold of the door there?
A. Because I came up from breakfast with my mother, and Mrs. Glover was a little behind my mother, and my mother turned to her and she said, "Gussie, I want to speak to you," and my mother

met her at the door with the package, and I was standing then almost in front of the bureau.

Q. Did your mother have the package downstairs with her?

A. Let me see; that I do not remember.

498 Q. She must have had it, must she not?

A. I came in before my mother and had my back turned, and when I heard her speak to Gussie I turned around, and then I saw her hand the package to Mrs. Glover.

Q. And your mother's progress upstairs and into the room was interrupted by her turning to speak to Gussie and give her the bonds?

A. No, sir; I came upstairs, and my mother just simply looked around and said, "Gussie, I wish to speak to you," and I continued on.

Q. You had then come from the breakfast-room?

A. Yes, sir.

Q. Was that on the lower floor?

A. Yes, sir.

Q. Then it does not necessarily follow that your mother had the bonds with her at the breakfast table, because she had not yet entered the room?

A. I do not know about that.

Q. She had not entered the room, according to your own account?

A. She might have entered when I had my back turned, and she might have picked up something off the table or from the cedar closet, for all I know.

Q. What did she say?

A. I do not know; I told you I turned when I heard her speak.

Q. How far behind you was she?

A. I did not notice.

499 Q. How long had you come upstairs before she did?

A. I came up almost with her to the top of the stairs, and then she turned for a minute and spoke to my sister and I continued on.

Q. Did you see the bonds at the breakfast table?

A. I did not, but I saw the bonds when my mother handed them to my sister.

Q. You breakfasted with your mother?

A. Yes, sir.

Q. What sort of a package were the bonds in?

A. It was a sort of a long package.

Q. What color?

A. White.

Q. White envelope?

A. I could not swear whether it was a white envelope or not.

Q. How did you know that they were bonds?

A. Because I heard my mother say so.

Q. You did not say anything about bonds in your direct examination, did you?

A. Of course I did; I said that my mother then said to my sister,

"I thank God that your father in heaven can see me give you your bonds in his name."

Q. Why were they called "your bonds"?

A. Because they were hers always.

Q. They were hers always?

A. Yes, sir; they were.

Q. Did you have bonds always before?

500 A. I do not know whether I had bonds or not. I had money in my own right, and mother was my guardian and was keeping it for me.

Q. In your own name?

A. Yes, sir; I could have had it at any time. She could have transferred the bonds to my name at any time.

Q. And could not your mother at any time have given you a house for the bonds?

A. Yes; she might have done that if she had invested the money in that way. We were entitled to a certain sum due us out of my father's estate and she was investing it for us.

Q. And she determined that Gussie should have bonds instead of something else?

A. I do not know about that.

Q. Why did you say that she had bonds always?

A. She had the bonds because my mother had transferred them to her. My mother went to the Treasury and transferred them to her name, and then they were her bonds.

Q. Did you not say that she had had those bonds always?

A. I did not say that she had the bonds always, but she had a right to them, but they were not in her name always.

Q. Did you not say just now that she had had those bonds always?

A. If I did, I made a mistake, because she did not have the bonds always. They were in my mother's name, but she had a perfect right to them. My mother was our guardian.

501 Q. Suppose she was entitled to bonds and your mother gave her real estate?

A. She was our guardian and she invested the money and she might have given real estate to her.

Q. Do you mean to say that she had a right to have the bonds transferred to her whenever she requested your mother to do it?

A. Yes, sir; and they were transferred to her. My mother gave her bonds because she believed that they were the safest.

Q. When did she say that?

A. She said that repeatedly to her.

Q. I was not there and I would like to know when.

A. I do not remember exactly when. It was said so often that I could not tell when.

Q. Why did she not give you bonds instead of this note of John E. Beall's?

A. Because she thought it wiser not to do it.

Mr. GLOVER: What?

WITNESS: Because she thought it wiser not to do it.

Q. You say that Mrs. Glover told you when the will was opened to get a lawyer, did you not?

A. I said that she said that; yes. She said that after my sister Josephine said that that was coming to us from our father's estate, and she said who was going to give it to us; and when my sister said that the will went into effect and my mother had given
502 it to us she said that there was nobody to give it to us, and that we would have to get a lawyer.

Q. And you did get a lawyer, did you not?

A. Yes, sir; later.

Q. Almost immediately, did you not?

A. No; not immediately.

Q. Within a very few days?

A. I do not exactly remember when.

Q. Whom did you get?

A. Mr. Henry E. Davis.

Q. Did you not get somebody before you got Mr. Davis?

A. No; I never selected a lawyer before that.

Q. You mentioned Mr. Stewart's name, did you not?

A. She did; yes.

Q. That was the first one that you got?

A. She mentioned his name twice, but I did not employ Mr. Stewart.

Q. Mr. Stewart was the man that you got?

A. Mr. Stewart came to see us as a friend, because he said that he knew that we needed advice.

Q. Did you not send for him?

A. No, sir.

Q. None of you?

A. No, sir; he came in as a friend.

Q. That was a strange coincidence, was it not, that she should say that you had better get a lawyer and then Senator Stewart should simply drop in of his own motion?

503 A. Mr. Stewart came in of his own accord; she mentioned Stewart; I am under the impression that she said Mr. Stewart when the will was read.

Q. Well, did you not think it was rather funny that she should agree to everything that you said and at the same time advise you to get a lawyer?

WITNESS: What?

Mr. GLOVER: That she should agree to everything that you said, agree with you all, and at the same time advise you to get a lawyer?

A. No; because I thought from the commencement that she was acting under your influence.

Mr. GLOVER: Well, you are mistaken, Miss Patten.

WITNESS: I did not think I was then and I do not now.

Mr. GLOVER: Still it is not necessary to discuss that.

WITNESS: Well, I did not think it was strange then, because I thought she was acting under your influence.

Q. Now, assuming, if you please, that she was acting under my

influence, the point that I ask you about is this: If she had then admitted that she had had her full share of her estate, which you say that she did, I think?

A. She did.

Q. Then why should she tell you to go and get a lawyer?

A. Because she did not seem to want us to have ours.

Q. Oh, she did not?

A. It looks very much that way.

504 Q. Then, there was some difficulty about it, and a lawyer was to be consulted?

A. It seemed so, because she admitted that she had gotten what belonged to her, but objected to our getting what was our right and what was coming to us from our father; she acknowledged that she had received hers.

Q. She did object to that then?

A. She did when she said that we could not take it.

Q. Then she said that you had better get a lawyer, and, whether you sent for him or not, you had him within a day or two?

A. No.

Q. Now, then, can you state the time which elapsed between Mrs. Glover's advice to you to get a lawyer and the time when Mr. Stewart, you say, dropped in as your friend?

A. Mr. Stewart had been there before.

Q. Oh, he had?

A. Yes; to see us as a friend.

Q. Then you had consulted him already?

A. No, sir; we had not consulted with him.

Q. Had not talked over your mother's estate?

A. He came as a friend.

Q. And as a friend discussed the legal aspects of the case, did you not?

A. I do not know whether you would call it the legal aspects of it.

505 Q. Did you not consult with Mr. Stewart about this matter before you came to ask Mrs. Glover about it, in view of the fact that she had received this money or these bonds; did you not consult Mr. Stewart before that about it?

A. No, sir.

Q. Now, then, when did you first consult with Mr. Stewart?

A. I never consulted with Mr. Stewart.

Q. You do not mean that, because he filed the amended petition in the probate court for you?

A. Mr. Stewart came and I signed the paper which I thought was a proper paper to be signed under the circumstances; it was to enable us to have our mother's estate settled at once.

Q. He was acting as your attorney, was he not?

A. You might call it as an attorney.

Q. Did you not call it so?

A. I did not consider that he was my attorney at all. I never engaged him as such.

Q. Do you think that a man has to be employed and paid in order to act as attorney?

A. I do not know much about law matters or lawyers.

Q. Then the facts are these: Mr. Stewart did come there at some time, whether you sent for him or whether you employed him or not, and he advised you about the legal aspects of the case, did he not?

A. He did not advise me at all; he drew up a paper and we went with my sister to have the will probated.

Q. He drew the first petition for probate, did he not? Be-
506 fore we go into that, when did Mrs. Glover say to you that she was paid in full her share of her father's estate?

A. She said it when the will was read.

Q. That she was paid in full?

A. She said that she received what was coming to her from my father.

Q. Did she say that she had received all that was to come to her from her father?

A. I understood it was in full. I understood that she thought so, and I think it was.

Q. Why, then, in one of the pleadings did you say that the estate was still indebted to your sister, Mrs. Glover?

A. I never knew that I did.

Q. I will call your attention to it. Did you not file a petition in the orphans' court before Judge Cox for the allowance of your claims?

WITNESS: What?

Mr. GLOVER: Please repeat the question.

(Last question repeated as requested.)

A. Yes.

Q. In that petition, which appears by the record to have been filed on the tenth day of May following your mother's death, appears the following: "Fourth. That by virtue of the premises the estate of said Anastasia Patten, deceased, now stands justly indebted to the said Augusta Patten Glover to the extent hereinbefore
507 indicated—that is to say, to said Augusta Patten Glover in the sum of $101,600——

WITNESS (interrupting): Except——

Mr. GLOVER: Wait until I get through, please —"as of the — day of September, 1888, subject to a credit of $102,800 as of the first day of January, 1887." What do you say as to that statement? In the first place, did you make it?

A. Yes.

Q. Yes; you made it. It appears that by that statement that she was not paid in full?

A. There was some interest due her.

Q. Now, when she made this admission to which you have testified, did she say anything about interest?

A. No.

Q. Did she say anything about principal?

A. No; we all understood it was principal; that it was principal that she had received.

Q. I am not asking you what you understood. I am asking you what she said, if you understood what was said. I am asking what was said. Did she say then that she had been paid the principal and there was still some interest due or something of the kind?

A. No.

Q. She said that she was paid in full that day, did she?

A. Josephine asked her if she had received her portion of my father's estate, and she said that she had.

508 Q. Were those the exact words of Miss Josephine?

A. Yes, sir.

Q. Nothing was said about all of her portion?

A. No, sir.

Q. Where were you when Miss Josephine asked her if she had received her share of her father's estate?

A. I was standing in front of her in the house on Massachusetts avenue.

Q. In what room?

A. Our home on Massachusetts avenue.

Q. Who was present on that occasion besides yourself?

A. My three sisters and Mrs. Glover.

Q. Were they all present on the day that the will was read?

A. Yes, sir.

Q. Who else was there?

A. Nobody but my three sisters, Mrs. Glover, and myself.

Q. When the will was read?

A. Yes, sir; when the will was read.

Q. Don't you know that John E. Beall and Clark, of California, were there when the will was read?

A. No, sir; they were not.

Q. Clark was not there?

A. He was not.

Q. Are you as positive about that as you are about these other statements?

A. Perfectly positive.

509 Q. Don't you remember, Miss Edith, that Mr. Clark rather made the point that there ought to be somebody else there when the will was read?

A. He made no such point.

Q. Did he not say that I ought to be there?

A. Never; he did not.

Q. I was not there, was I?

A. No, sir.

Q. I was not invited, was I?

A. No, sir; you had no interest in it whatever.

Q. That was the reason, I suppose, but I am asking what the fact was. I was not there?

A. You were not there.

Q. Well, will you look at this paper (handing witness the amended petition for probate), if you please?
A. Yes, sir.
Q. Do you recognize your signature to that paper?
A. Yes, sir.
Q. And that (indicating) is Miss Mary's?
A. Yes.
Q. And that (indicating) is Miss Josephine's?
A. Yes, sir.
Q. And that (indicating) is Miss Helen's?
A. Yes.
Q. And in the lower-hand corner what do you find there?
A. William A. Stewart and W. or N. or U.—it might be anything—Upton.
510 Q. What else does it say?
A. Solicitors for the petitioners.
Q. Now, at the time that was filed Mr. Stewart and Mr. Upton were acting for you as your solicitors, were they not?
A. Not to my knowledge; I had never employed them.
Q. Whether you had employed them or not, you permitted them to act?
A. I permitted Mr. Stewart to do what he thought was best.
Q. He thought best to prepare this petition for you to file and it was filed by you?
A. I did not file it; I signed it.
Q. What was Mr. Stewart doing then attending the box at the safe-deposit company?
A. If he was there I do not know; I was not at the safe-deposit company.
Q. You were aware from report that he was there, were you not?
A. Yes, sir; he was there.
Q. He was there. What did you understand that he was up there for if he was not appearing for you or acting for you?
A. I do not know anything about what was done at the safe-deposit company, for I was not there.
Q. What did you suppose that Mr. Stewart was doing when he came around to the house if he was not acting for you?
A. I suppose he was calling on me.
511 Q. Making a social call?
A. As a friend.
Q. Did he talk over the difficulties about the estate when he came as a friend?
A. I do not remember exactly what was said.
Q. You do not remember whether you talked about them or not?
A. No.
Q. Did Upton also call as a friend?
A. He came with Mr. Stewart.
Q. Why did he come—as a friend?
A. Because Mr. Stewart brought him.
Q. Why did Mr. Stewart bring him?
A. I did not ask him.

Q. You never knew, did you?
A. I never thought of asking him.
Q. And you never knew?
A. No, sir; because I never asked him.
Q. He might have stated without your asking him. Do you not know what he came there for?
A. No, sir.
Q. Do you not know what he came there for?
A. He came to see us.
Q. Socially?
A. I do not know.
Q. On business?
A. I do not know.

Q. Don't you know that he is not a man who would ever
512 call upon you socially?

A. I do not know who he would call upon.
Q. Mr. Upton was not a man in your circle exactly, was he?
WITNESS: In what?
Mr. GLOVER: He was not in your circle exactly.
WITNESS: I do not know what you mean.
Mr. GLOVER: I will try to make it plainer. Was he a man who would be received at your house if he called socially without an introduction?
A. Certainly. If he called without an introduction he would be received as any one who came with Senator Stewart would be received.
Q. Then you desire to be understood as saying that that was a social call of Mr. Upton on you?
A. He called with Senator Stewart; whether it was social or not I do not know.
Q. That is the very point—whether he called as an attorney or whether he called socially. Which do you find it to have been?
A. As I never employed him as my attorney, he could never have called as my attorney.
Q. Then he did not call as your attorney?
A. No, sir; he did not.
Q. Yet you know that Mr. Stewart was there as your attorney, don't you?

A. No, sir; I do not.

513 Q. He signed your petition for probate. Was that done on social grounds?

A. I do not know anything about that, but I do not think that they do those things on social grounds.
Q. Well, who prepared this paper that I have just shown you?
A. I do not know. Senator Stewart asked me to sign it and I signed it.
Q. Mr. Stewart asked you to sign it?
A. Yes, sir; Mr. Stewart asked me if I would sign it.
Q. When and where?
WITNESS: What?
Mr. GLOVER: When and where did he ask you to sign it?

A. I do not remember; I suppose it was at my home, on Massachusetts avenue.

Q. But do you not remember where?

A. I remember signing it.

Q. Then you know it was at your home, do you not?

A. Yes; because I would have signed any paper that Senator Stewart asked me to, because I knew he was acting for my interest.

Q. Because you knew he was acting for your interest?

A. Yes, sir; as a friend.

Q. He is an attorney, is he not?

A. Yes, sir; a very celebrated one.

Q. A very celebrated attorney?

A. Yes; very.

Q. He is a United States Senator, is he not?

514 A. He is.

Q. Do you happen to know whether he is on the Judiciary Committee?

A. I do not.

Q. Now, this celebrated attorney got you to sign this paper, did he not? Did you have any talk with him about the facts beforehand?

A. I signed that paper because Senator Stewart brought it to me, and I thought it was the right and proper thing under the circumstances.

Q. My question is hardly answered. Did you have any talk with him about the facts beforehand?

A. No, sir.

Q. Did you not give him the facts to draw the paper on?

A. He knew them, and I read the paper.

Q. But before you signed the paper did you give Senator Stewart the facts upon which to draw the paper?

A. He knew them.

Q. Knew them from you?

A. I do not know.

Q. Knew them from your sisters?

A. I do not know.

Q. How do you know that he knew them?

A. Because he put them down there.

Q. Those are the facts, then, in that paper, are they?

A. I believe they are.

Q. Well, now, in this paper, Miss Edith, you state that

515 Mrs. Patten's undivided share of that estate was worth about $94,385.65, don't you?

Mr. DAVIS: One moment. Be kind enough to let me see that one moment.

WITNESS: I do not understand that question.

Mr. DAVIS: Look at the paper. (To Mr. Glover:) That has been put into the record.

Mr. GLOVER: Yes.

A. Yes.

Q. Now, who owned the rest of the estate?

A. Mary E. Patten, Josephine A. Patten, Helen Patten, and Edith Patten. They had a claim against the estate.

Q. I am not asking you about claims against the estate. Who owned the balance of the estate after taking out the $94,000?

A. My four sisters; my three sisters and myself, in the personalty. Well, I do not know that I want to say that that was our claim.

Mr. DAVIS: Make any explanation that you wish.

A. Well, I understand that each one of my three sisters and myself has the estate, or the estate is indebted to us for $101,600, and when that was taken from the personalty it left the personalty at $94,000 and something.

(By Mr. GLOVER:)

Q. Now, I am not speaking of claims against the estate. Here is my question: If Mrs. Patten's share of that estate was only
516 $94,000, who owned the balance of the estate? If your mother only owned $94,000 and there was $500,000 altogether, who owned the balance of the estate outside of her $94,000?

A. After we had received from her what came to us from our father, then Mrs. Glover had an interest with us.

Q. Then Mrs. Glover owned some of it; then who owned the rest; she did not own the balance of it?

A. No; we owned it with her.

Q. Now, you filed a petition for claims here, did you not?

A. Yes.

Q. Will you please look at this printed copy of your petition, appearing on page three of the abstract of the record, and see if there is anything in that about her owning any part of the estate? Nothing there, is there?

A. No.

Q. Now, will you please look at this original petition for probate, filed on the 3rd day of October? That is your name attached (indicating)?

A. Yes.

Q. And also that of your sisters?

A. Yes.

Q. Also Mrs. Glover's, is it not?

A. Yes.

Q. Now, is there anything in that petition about Mrs. Patten owning a little part of the estate or an undivided share?

A. I do not know.

Q. Won't you please examine?

517 A. (After examining.) There is nothing there; no, sir.

Q. Now, can you explain to us why that statement was put in the paper filed on the 10th, when it was not in the paper filed on the 3rd of the same month—October—in the same year?

A. No.

Q. What was the occasion for filing a new petition for probate? You had one in there already. What was the occasion for filing it?

A. I do not remember.

Q. You do not remember any discussion about that?

A. No; I do not remember.

Q. Now, Miss Edith, see if I can refresh your recollection. Was there not a proposition made that you should give a bond for double the amount of the whole of the estate—that is to say, for a million dollars—and was not the amended petition for probate framed with a view of reducing the bond?

A. I do not remember.

Q. Can you say that that was not the fact?

A. I do not remember. I cannot say that it was so or was not.

Q. Was it not a fact that you wanted to give a bond for twice $94,000 instead of twice $500,000?

A. I do not remember.

Q. Do you not remember that there was a hearing in court as to what the amount of the bond should be, in which Mr.
518 Upton and Mr. Stewart appeared for you?

A. I do not remember at all; I remember very little about it.

Q. Is your memory bad at all.

A. No, sir; it is remarkably good.

Q. Is it better for things that happened five years ago than for things that happened a few months ago?

A. I never noticed.

Q. Well, you have paid attention to this controversy as it went along, have you not?

A. About what?

Mr. GLOVER: About this controversy over the estate.

A. Yes; not immediately after my mother's death.

Q. It has been three years now since the controversy began?

A. Yes, sir; I think so.

Q. During that time has not every measure that was taken by your side of the case been considered by all of you together?

A. From the time Mr. Davis took the case, yes.

Q. Well, Mr. Davis has had the case a year or more, has he not?

A. I do not know; he has had it from the beginning.

Q. Mr. Davis has had it from the beginning?

A. He was the only attorney I ever employed.

Q. Now, when your mother died how much property did you find invested in the name of Anastasia Patten as guardian for you or any of your sisters?

519 A. The entire estate was invested in my mother's name, except the forty-five thousand dollars, but not in her name as guardian.

Q. It was in her individual name, was it not? There was no property the title to which was in the name of Anastasia Patten, guardian, was there? Was there any separate investment of your money or that of your sisters in your name except this forty-five thousand dollars that you speak of?

A. No.

Q. Then all your money and your sisters' money must have been invested in your mother's name?

A. It must have been,

Q. It must have been for some years, must it not?

A. It had always been so.

Q. It had always been so?

A. Yes, sir.

Q. When you said in this petition for probate that your mother owned an undivided share, did you not mean that you and your sisters owned the balance, because your money had gone into it and had produced it?

A. Yes.

Q. That is what you mean?

A. Yes; my three sisters and myself.

Mr. GLOVER: That is what I meant.

WITNESS: To my three sisters, Mary E. Patten, Josephine A., Helen Patten, and myself.

520 Redirect examination.

By Mr. DAVIS:

Q. Miss Edith, you have been asked at some length about this amended petition for probate. I will ask you whether at any time during your mother's lifetime there was an understanding between you, or between her and yourselves, that you had anything like a partnership interest in the estate that was standing in her name.

A. There was never any partnership.

Q. Was there ever any agreement between your mother and her daughters, you or either of your sisters, whereby you had any specific interest in anything that stood in her name at all?

A. My mother said to me one day that she wanted to buy a building on F street, but she said, "I do not like to take your bonds," and I told her then, "Mama, take whatever is mine, as you have always done, and do with it as you please, as I will always be satisfied," and she told me I would never regret it.

Q. Then, if I understand you, there was not any understanding between you and your mother that you should be a joint owner of any property that she bought?

A. No, sir.

Q. Or an undivided owner of any property that was in her name?

A. No.

Q. Or anything of the kind?

521 A. No, sir.

Q. Now, I want to ask you about this amended petition for probate. Did you give anybody any information for the purpose of drawing that up?

A. I never did; no.

Q. Do you know where whoever drew up that paper got the information?

A. No.

Q. I understood you to say that the paper was brought to you, as you stated, by Senator Stewart, and, believing it a proper paper to sign, you did it by his advice?

A. Yes.

Q. For what purpose?

A. For the prompt settlement of my mother's estate.

Q. That is in respect of getting the will through?

A. Yes.

Q. And Senator Stewart and Mr. Upton were acting for you, were they?

A. Yes.

Q. Do you know whose phraseology this is: "Upon information and belief the petitioners represent as follows: That the personal property aforesaid of the said estate," meaning your mother's estate, "as above set forth at $120,322, consisting of household furniture," &c.? Do you know whose phraseology that is?

A. No.

522 Q. You do not know whether Senator Stewart or Mr. Upton or who it was that wrote this paper?

A. No.

Q. Or set forth the matter in this paper?

A. No.

Q. Now, the fact was, was it not, that before this paper was signed and filed the agreement signed by you all at Warrenton had been brought up for discussion or consideration?

A. Yes.

Q. Do you remember whether Senator Stewart and Mr. Upton said anything to you to the effect that that paper was simply a statement of the estate for the purpose of reducing the size of the bond, or anything of that kind?

A. No.

Q. Do you remember any discussion or any consideration of that subject in which you took part?

A. No.

Q. So that when this paper was brought to you it was in its present phraseology, and you do not know who the author is?

A. No.

Q. And you were requested by Senator Stewart to sign it as being a proper paper to sign for the settlement of the estate?

A. Yes.

523 Q. And you signed it under his advice and for that purpose under his suggestion?

A. Yes.

Q. Now, you have been asked about a statement made by your sister, Mrs. Glover, as to her having received the money due her from her father's estate, and you have been particularly and persistently asked whether Mrs. Glover said that she had been paid in full. Now, what do you say as to her having used the words "in full"?

A. She did not use the words "in full," but said that she had been paid her share of her father's estate.

Q. Did she or not use any other words or any other language than those that you have imputed to her?

A. She did not.

Q. You say that Mr. Stewart did not advise you or did not advise with you. What do you understand to be the meaning of a person advising with another? Do you mean by that that when Senator Stewart was at the house he did not talk with you about your affairs?

A. When Senator Stewart came to the house he said that he thought that we needed advice.

Q. When you said that he did not advise you then, what did you mean?

A. Well, it may have been advice that he gave.

Q. You were also asked whether Mrs. Glover had any specified interest in bonds as distinguished from any other sort of
524 property. Do you remember anything being said by your mother at the time that the agreement was signed at Warrenton as to bonds?

A. Yes.

Q. What was said then?

A. My mother said that we could take bonds and she would take "the Father De Schmidt," because it was not safe, it was not certain, and the bonds were sure and certain.

Q. Did you know, as a matter of fact, how many bonds your mother had in the registry of the Treasury at that time?

A. No; I did not.

Q. Look at this paper and state if you ever saw it (handing the witness paper marked for identification Exhibit M. E. P. No. 4).

A. Yes; I saw that paper.

Q. Where did you see it?

A. In Warrenton, Virginia.

Q. And is that paper that you referred to in your direct examination?

A. Yes, sir; that is one of the papers.

Q. Look at that paper, then, and refresh your recollection as to the quantity of bonds that your mother had at that time.

Q. Yes; $700,000.

Mr. DAVIS: I offer this paper in evidence, and also the paper heretofore marked for identification Exhibit M. E. P. 3.

525 The papers referred to were marked by the examiner as Complainants' Exhibits.

Q. In whose handwriting is that paper (handing same to witness)?

A. I think C. J. Hillyer—Judge Hillyer.

Q. Do you know whether or not your mother kept the $700,000 in bonds or whether she made any other disposition of them?

A. She transferred them.

Q. I want to know whether you know of your own knowledge how long your mother kept those $700,000 together.

A. No, sir.

Q. Now, you said in your cross-examination that on the occasion when your mother handed your sister the $80,000 in bonds she said to your sister, "Gussie, I wish to speak to you." Where was your mother and where were you at the time when that remark was made?

A. We were all coming up the steps.

Q. But the point, Miss Edith, is, had you come up the steps or were you on the steps or down at the foot of the steps, or where were you?

A. I was very near the top and my mother was at the first landing.

Q. There is a flight of steps leading from your hall?

A. Yes.

Q. And when it gets about half way between the first and second story there is a landing?

526 A. Yes, sir.

Q. You say that when you were near the top of the flight towards the second story your mother was at about the landing?

A. She was at the landing, coming up.

Q. And she said to your sister, "Gussie, I wish to speak to you"?

A. Yes.

Q. And you went on into your mother's room and your mother followed in after?

A. Yes.

Q. Did you see her go to the cedar closet?

A. I did not. I was standing at the bureau and I turned around when I heard her say that.

Q. You were standing at the bureau in such a position that you did not see your mother when she spoke?

A. I did not see mama's whole face; I saw her hands and I saw Mrs. Glover's hands when she put them out to take the bonds and when she put them out again and gave them back.

Q. When your mother remarked to your sister, "Gussie, I wish to speak to you," she was not going into the room, but was on her way upstairs?

A. I was upstairs and Gussie was coming up to go into the room.

Q. In point of fact, has there ever been any settlement of your father's estate out in Nevada or anywhere else, so far as you know?

527 A. We divided it at Warrenton.

Q. With that exception, I mean?

A. No, sir.

Recross-examination.

By Mr. GLOVER:

Q. Where do you suppose Mr. Stewart learned the date of your mother's death, as mentioned in this paper?

A. He may have learned it from the newspapers and he may have learned it from us.

Q. Do you think that he would have taken a newspaper statement without inquiring into the exact date?

A. I do not think he would; I do not know that anybody would.

Q. Now, this statement as to where your mother died was gotten from you?

A. Yes.

Q. You or your sisters?

A. Yes; from me or my sisters.

Q. What did Senator Stewart know about the value of your household furniture, horses, and carriages except what you told him?

A. I do not know. I do not think he knew anything.

Q. He must have gotten that from you or your sisters?

A. He must have gotten that from somebody, I suppose.

Q. How about the jewelry?

A. He must have gotten that from somebody or he estimated it himself.

528 Q. Who told him?

A. I do not know; I suppose that he knew that.

Q. And where did he get the information about the horses and carriages?

A. I suppose he made up his own mind about that; I suppose that he could have seen them.

Q. He did not go through your house to know what the household furniture was worth, did he?

A. I do not remember seeing him.

Q. Are you not satisfied that he got that information or data from you or your sisters?

A. I am not satisfied.

Q. Had he ever seen your mother's jewelry?

A. I do not know; I suppose that he had seen some of the jewelry.

Q. He says in this petition, "jewelry of the estimated value of $7,000." Where did he get that?

A. I do not know.

Q. Do you know that he got that from you or your sisters and could not have gotten it from anywhere else?

A. I do not.

Q. Was the jewelry placed around so that he could have seen it whenever he dropped into the hall?

A. Of course not.

Q. So that he would have to get that information from you or your sisters?

A. Yes, sir; he might have gotten it from my mother.

529 Q. Do you think that that was put in there on information that he had derived from your mother during her lifetime?

A. I do not know.

Q. Who told him about the cash in bank?

A. I dare say he got it at the bank. I do not know.

Q. Do you remember discussing the points with Senator Stewart?

A. No, sir.

Q. Do you remember that you led Stewart to believe that there was an immense amount of stocks, bonds, etc.?

A. I never lead Mr. Stewart to believe anything that was not so.

Q. Do you remember your sister doing that?

A. No, sir.

Q. Do you remember Miss Josephine testifying about the matter and her statement about the bonds, although Clarke knew that there were notes?

A. I am satisfied that she did know about it.

Q. The question is, Did you hear her testimony on that?

A. I heard her testimony.

Q. Was she correct or not?

A. As far as I know, her testimony is correct.

Q. Then if there was any discussion about the assets of the estate with Mr. Stewart you were not there?

A. It was not with me.

530 Q. And then this petition speaks about Pennsylvania Telephone stock and Chesapeake and Potomac Telephone Company stock. If you and your sisters did not give Senator Stewart the information, how did he get it?

A. I do not know.

Q. Where else could he have gotten it?

A. I do not know; I never asked him; I never knew anything about it; I was then taking no interest in it; did not know and did not care.

Q. Now, I will ask you this question, Did you suppose Mr. Stewart knew what your ages were without your telling him?

A. Having been a life-long friend, I would not be surprised if he knew.

Q. That is rather a delicate question with some young ladies?

A. But not with me.

Q. Do you think that Senator Stewart would have put the ages in without asking you?

A. I do not know what Senator Stewart might do.

Q. Now, this paper says that you do not want to give any bond except for the payment of debts. What debts did he refer to?

A. I do not know.

Q. You do not know what debts you referred to?

A. No, sir.

Q. Do you not know as a fact that that paper would extinguish you- own debts so that you could not sue for them?

A. No.

531 Q. Why did you say that you wanted to give that peculiar kind of bond?

A. I never said so.

Q. Did you not say so here, "that the executors be required to give no bonds except to secure the payment of the debts"? That is not the bond that is ordinarily given. Bonds are generally given to correctly administer the estate, but this is a peculiar kind of bond. Why did you ask for this kind of a bond?

A. I do not know.

Q. The fact is that you were not pretending to have any debts at that time?

A. I did not pretend anything at any time.

Q. I would say contending. You were simply talking of the property under the will and discussing the question of how much Mrs. Glover had gotten—how much had been advanced to her?

A. She has never been advanced anything; she received the sum that was coming to her from her father's estate.

Q. Is that all the explanation of that paper?

A. I do not know.

Q. You say that Mrs. Patten said that she would keep "the Father De Schmidt" and let you take the bonds for your claim, did you not? You mentioned "the Father De Schmidt," did you?

A. Yes.

Q. What was the "Father De Schmidt"?

532 A. It was some mining stock.

Q. It was worthless, was it not?

A. It was not at that time.

Q. What was it worth then?

A. I do not know.

Q. It is now worthless, is it not?

A. I do not know.

Q. Don't you know that that stock is practically worthless, and don't you know very well what the stock is?

A. No, sir; you can't tell what stocks are worth; nobody could tell about the stocks.

Q. Then the $700,000 worth of bonds was sold and your mother bought real estate very heavily in Washington with the proceeds, did she not?

A. I do not know; I never questioned my mother about what she was doing, as I knew it was right.

Q. Do you mean to say that you do not know of your mother's buying a lot of real estate a couple of years before she died?

A. I knew that my mother invested here in real estate, but I do not know how she bought it or anything about it; I never questioned her.

Q. Did you not know that she had used the bonds, and that she was going to buy real estate?

A. I told her that she could take any bonds that I had and use them as she pleased: put them in real estate or anything else.

533 Q. And this interview in which you say that Mrs. Patten handed to Mrs. Glover the bonds occurred on that day?

A. It was the same day that my mother had been to the Treasury.

Q. The same day?

A. The very same day.

Q. Was that the day that the bonds were transferred?

A. The very day that the bonds were transferred.

Q. It was not the day before the marriage?

A. No, sir; it was not the day before the wedding.

Q. The wedding was on the 21*th?*

A. I do not know what day it was; it was three or four days before.

Q. It was not the day of the wedding?

A. No, sir.

Q. The wedding was in the evening, was it not?

A. Yes, sir.

Q. What wedding present did your mother give your sister?

A. A trousseau and the lace on her bridal dress.

Q. That is all?

A. Yes, sir.

Q. Unless the bonds were a wedding present?

A. They were not a wedding present. Those were not my mother's to give, and she could not have given them.

Q. When you say that the wedding present that she got from her mother was the lace on her dress and her trousseau——

534 A. The only wedding present that she received from my mother was the lace on her wedding gown.

Q. A trousseau never counts as a wedding present, does it?

A. It does, very often, especially where a person has money in their own right.

Q. Where one has money in her own right the trousseau counts as a present?

A. Yes.

Q. What cases do you know of that kind?

A. I have heard of them very often.

Q. Give us an illustration where a trousseau was considered as a wedding present.

A. I have heard of people given a trousseau as a wedding present often.

Q. That is not the point. Just name an instance where a mother allowed her daughter to be married without a single wedding present, but simply gave her a trousseau.

A. I have heard of a number of cases, and mother also gave her the lace on her gown.

Q. That is a part of the trousseau—part of the wedding dress?

A. That is not a part of the trousseau. The lace on the wedding gown is not a part of the trousseau.

Q. Well, I am not an expert in these matters.

A. I see that you are not.

Q. Now, name a case that you know of where a mother,

535 whether rich or poor, allowed her daughter to be married without a present—without a wedding present.

Mr. DAVIS: I object to that question as wholly irrelevant and immaterial.

Mr. GLOVER: That is all; I ask nothing more.

By Mr. DAVIS:

Q. You have been asked about a Father De Schmidt. Do you

know what Father De Schmidt was yielding at the time that this agreement was made, in 1885?

A. No.

Q. Do you know whether it was yielding anything?

A. I think it was.

Q. Can you approximate the amount that it was yielding?

A. It may have been about $6,000 a year.

Q. Was it not something like $8,000 a year?

A. It may have been.

Q. It was a mining stock?

A. It was.

Q. Where was the mine?

A. Black Hills, Dakota.

Q. Now, you have been asked at some length about the information upon which this amended petition for probate may have been drawn up. Do you remember, at the time of your mother's death, who was in possession of any of her notes, stocks, and jewelry?

A. Yes.

536 Q. Who?

A. We were.

Q. Who else outside of the family? You had no stocks, bonds, and notes in your possession?

A. No.

Q. Do you think of any one who had?

A. I do not. If anybody had, I do not know.

Q. Perhaps I can refresh your recollection. Do you not remember that Mr. John E. Beall had a great quantity of your mother's estate in his possession?

A. Yes, sir.

Q. Stocks, bonds, and notes?

A. Yes, sir; I remember that distinctly.

Q. Notes, stocks, bonds, and some jewelry?

A. Yes, sir.

Q. Which he turned over to you?

A. To Josephine as collector.

Q. Now, look at the papers now shown you and state if you recognize this.

A. Yes.

Q. This paper is dated December 29, 1888, and is signed by whom?

A. By Josephine A. Patten.

Q. And this paper dated January 10th, 1889, is signed by whom?

A. Josephine A. Patten, collector.

537 Q. How does Josephine A. Patten describe herself in the first paper?

A. As Josephine A. Patten.

Q. And how about this paper?

A. Josephine A. Patten, collector of the estate of Anastasia Patten, Washington, D. C., December 29, 1888.

Mr. DAVIS: Now, these papers having heretofore been marked for identification during the examination of the witness John E. Beall are here offered in evidence as Exhibit- E. A. P. No. 1 and E. A. P. No. 2, respectively.

Q. Do you remember or not of Mr. Beall's being at the house at or about the time of the preparations for the probate of the will were going on and seeing him there in conference with Senator Stewart?

A. Yes.

Q. Do you remember whether Mr. Beall, Senator Stewart—Mr. Beall or Senator Stewart or anybody else was in the house at the time that the will was shown, not in the room?

A. Judge Clarke was downstairs and Mr. Beall was down in the library. We were upstairs.

Q. Do you or not remember anything about Mr. Beall's being in conference with Judge Clarke and Senator Stewart or Judge Upton or any of those gentlemen at about the time that these proceedings were going on with reference to the probate of the will?

A. Yes.

538 Q. If you did not give Senator Stewart what information appears in that amended petition for probate, what do you say as to the possibility of his having gotten it from Mr. Beall?

A. I do not know; I suppose that he did.

Q. Might he or not?

A. He might have.

(By Mr. GLOVER:)

Q. What did Beall know about your mother's jewelry?

A. There was — brooch that had been left at the jeweler's to be mended and when we left mama overlooked it and when we arrived at Poland Josephine wrote and told Mr. Beall to go to the jeweller's, get the brooch, and keep it in his safe until we returned. Mr. Beall then wrote to us and gave us a receipt for the jewelry.

Q. I want to know what he knew that enabled him to say that the estimate of the value of the jewelry was $70,000.

A. He never said that.

Q. But you state it here, and if the information was derived from Mr. Beall that was put in the paper he would have to know about the jewelry, would he not?

A. I do not know whether he ever knew it.

Q. Now, is it not a fact that you are perfectly well satisfied that you and your sisters gave this information to Mr. Stewart?

A. I have no recollection of it.

539 Q. Will you say that they did not?

A. I am answering for myself and my sisters testify for themselves. I have no recollection of it.

Q. I am asking you what you know. Now, do you undertake to say, to testify, when you are under oath in this case that Mr. Stewart did not get that information from you or your sisters, some or all of you?

A. He might have. He did not get it from me, and I do not know whether he got it from my sisters.

EDITH PATTEN.

Subscribed and sworn to before me this 27 day of May, 1891.

ALEXANDER H. GALT,
Examiner in Chancery.

540 JOSEPHINE A. PATTEN recalled for redirect examination.

By Mr. DAVIS:

Q. You have been present during the examination of your sister, Miss Edith, who has just left the stand.

A. I have.

Q. You heard her examination with reference to the source of the information of Senator Stewart or whoever may have prepared the amended petition for probate that has figured in this examination, have you?

A. I have.

Q. Do you know anything about the valuations appearing in that amended petition? If so, state them.

A. I do. Mr. Beall had suggested that the carriages and horses and household furniture should be put down at $10,000, and I stated that that was too little, and he said, "It makes no difference; it is just for the probate of the will, and afterwards there will be an inventory made," and the same with regard to the jewelry. Mr. Beall put both figures without any knowledge, only what he had seen, and he said it was only a preliminary step; it made no difference, as valuations would be made thereafter.

Q. Now, do you know from where the information about the cash in bank came?

A. From the bank.

Q. Do you know who got it? You or Mr. Beall or anybody?

A. No; I do not know that.

541 Q. With reference to the notes and bonds and so on at the estimated value of $94,385.65. Do you know whose valuation that is?

A. No; I do not know whose valuation that is. I was not consulted about it. This, I suppose, was from the daily copies of the Stock Exchange.

Q. But do you know who gave Senator Stewart or whoever drew that paper information as to the number of shares of stock and so on that were belonging to your mother?

A. I think if it was not the safe deposit it must have been Mr. Beall.

Q. Did you at the time know exactly what your mother's holdings of those different stocks were?

A. No; but I knew they were in the safe deposit.

Q. Now, that amended petition for probate was made after the examination of the books at the safe-deposit box, was it not?

A. I would not be sure.

Q. Well, assuming that it was.

Mr. GLOVER: It must have been, Mr. Davis, because it contained a list of things that were in the box.

Mr. DAVIS: I assume that it was, Miss Patten, because it contained a list of articles that were contained in that box as has heretofore appeared. Now, Mr. Beall took a list of those things as they came from the box, did he not?

A. He did.

542 Q. Do you know what he did with it?

A. No.

Q. Do you know whether Mr. Beall conferred with Senator Stewart and Judge Upton or either of them in relation to preparing for the probate of the will?

A. I think he did.

Q. Did you or not see him about the house at the time the preparations were going on?

A. I saw him especially about the furniture and the jewels.

Recross-examination.

By Mr. GLOVER:

Q. Miss Patten, then you were consulted about the preparation of that paper, were you not?

A. No; I was consulted—they asked me if I knew anything about the furniture. I did not know for what purpose, whether it was for this paper or for any other paper. Mr. John Beall suggested $10,000 and $7,000 for the jewelry, and Senator Stewart said that the figure would make no difference, as an inventory would be made and the things would be appraised separately.

Q. Then both Stewart and Beall were consulting with you about it, were they not?

A. The only thing I was consulted about was the furniture; they asked me about the furniture and the jewelry, and Beall sug-

543 gested these two figures. I did not know whether it was for this paper or for any other paper.

Q. When was that consultation?

A. I do not remember. It was one morning.

Q. Was it before the filing of the paper?

A. I do not know anything about that; I told you I did not remember this paper yesterday.

Q. Now, didn't you hear Mr. Upton state the day the safe-deposit box was opened, the day before that paper was filed in your presence, as explaining the course he intended to take in regard to the bond, that you and your mother and your sisters were partners in all this property?

A. No; I never heard him mention the word "partner." I never considered myself other than a creditor.

Q. Is your recollection today any better than it was when you were examined in chief?

A. I told you yesterday that I did not remember anything about partnership.

Q. Now, didn't you say that may have been used?

A. I said the word "partnership" may have been mentioned, but I did not know what the conversation was about.

Q. Didn't you say that Upton may have said in your hearing and in your presence, explaining your attitude in the matter, that you were all partners?

A. No; I did not say that; I said the word "partnership" may have — used. I never considered myself a partner.

Q. What did Beall know about the jewelry your mother had?

A. Nothing.

544 Q. Then he must have gotten that from you or your sisters?

A. He got it from his own idea.

Q. Well, he was talking to you at the time?

A. No; he suggested $10,000 and asked me if I had any suggestion to make, and I said, "No; I do not care what they put it down at."

Q. Beall didn't know anything about your age and those of your sisters, did he?

A. I do not know if he did or not.

Q. Did he get these ages from you?

A. He never got any ages from me. Senator Stewart never asked me my age.

Q. Do you mean to say that people would draw that paper stating your age without consulting you about it?

A. He may have taken the ages from the will.

Q. Who did draw this paper?

A. I said yesterday that I did not know.

Q. Who presented it to you to sign?

A. That I do not remember either. As I said yesterday, it was either Stewart or Upton.

JOSEPHINE A. PATTEN.

The hour of 4 o'clock having arrived, Mr. Davis requested an adjournment until Monday morning next, April 27th, at ten o'clock a. m., for the reason that he has an engagement in court *to*

545 tomorrow, which has already been twice postponed for his convenience.

Mr. GLOVER: In view of the fact that the complainants were originally given 45 days, and that I have come many times to Washington and gone back without taking testimony to suit Mr. Davis' convenience, and in view of the fact that in consideration of that he agreed positively to finish this testimony without breaking the sitting when we got at it, I insist on his using so much of tomorrow as he may not be actually engaged in court in taking the testimony, and that in default of such an agreement I object that time has elapsed and he is not able to take any testimony without consent, and I prefer that he should present the matter to court.

Whereupon Mr. Davis remarks that the causes for the protraction

of the time within which testimony for the complainants has been taken will be explained in due form and before the proper body, not admitting, however, the exact accuracy of the statement just made by Mr. Glover, and he here notifies Mr. Glover that he will on Monday morning next, at the opening of the court, or as soon thereafter as counsel can be heard, apply to the court for an extension of 5 days' time within which to close the testimony for the complainants, the necessity for this application being the very protracted cross-examination of the witnesses produced on behalf of the complainants. He desires the examiner further to note that for 3 days and all of each day he has put aside all business for the purpose of this examination.

546 To which Mr. Glover rejoins that he shall apply tomorrow morning before Judge Hagner for an order on the complainants to consider his evidence closed at 10 o'clock a. m.

Mr. Davis reminds Mr. Glover that 2 days' notice of all such matters is required by the rules of the court, and he will not appear before Judge Hagner tomorrow morning for that purpose.

Whereupon at 4.15 p. m. adjourned until Monday, April 27th, at 10 o'clock a. m.

MONDAY, *April 27th*, 1891.

On account of the notices given by counsel at the last adjournment no session was had today. By agreement of counsel Tuesday, April 28th, 1891, at 10 o'clock a. m., was fixed as the hour for the next session.

547 By consent: TUESDAY, *April 28th*, 1891

The time originally allowed for the complainants to take testimony having expired, it is understood between counsel that the evidence taken today on behalf of the complainants is taken by mutual agreement as evidence-in-chief for them.

Present as before as to counsel and the complainants Miss Josephine A. Patten and Miss Helen Patten.

Whereupon WILLIAM J. FLATHER, a witness produced on the part and behalf of the complainants, being first duly sworn, deposes and says:

By Mr. DAVIS:

Q. Mr. Flather, please state your name, age, and occupation.

A. William J. Flather; thirty-one years; I am corresponding clerk for Riggs & Company.

Q. Look at the paper I now show you and state, if you please, whether you know what it is (handing witness paper).

A. Yes; it is a transcript of the accounts of Hellen Patten, Mary—here the account on the ledger is Mary Helen Patten, her right name is Mary E.—Edith A. Patten, and Josephine A. Patten with Riggs & Company.

Q. Whose handwriting is that?

A. It is mine.

Q. You prepared that paper, did you?

A. Yes, sir.

548 Q. And what do you say as to its representing the account of the Misses Patten with Riggs & Company?

Mr. GLOVER: I object to transcript from the books.

Mr. DAVIS: I intended to ask you if you would insist upon the production of the originals.

Mr. GLOVER: They have some other things I would like to see.

The WITNESS: I say it is a copy of their account with Riggs & Company from January 5th to and including September 15th, 1888.

Q. When was that prepared by you?

A. Yesterday afternoon.

Mr. DAVIS: I offer in evidence the paper just described and testified to by the witness, and the same is marked Exhibit W. J. F. No. 1.

Mr. GLOVER: I object to it on the same grounds.

Q. Mr. Flather, does this paper show all the deposits, and also all the checks, of the Misses Patten during the period covered?

A. Yes, sir—that is, here you will see (indicating) sometimes it says two checks or three checks or four checks; that includes the sum carried out—the total of them.

Q. For the day?

A. For the day; yes.

Q. What I wish to know is, do the books of Riggs & Company, for the period mentioned, exhibit any other transactions between the Misses Patten respectively and Riggs & Co. which do not

549 appear on this transcript?

A. Not as far as deposits and checks are concerned.

Cross-examination.

By Mr. GLOVER:

Q. Why did you make this out simply for those dates?

A. Well, it covered that ledger. The first deposit was made January 5th, 1888, and the accounts were transferred to a new ledger September 15th, 1888, and Mr. Davis said he wanted it from the time it was opened until after Mrs. Patten's death, and that, I thought, covered it.

Q. Why, according to your statement, it was opened in another ledger.

A. I did not make that statement.

Q. Then this does not show it from the time it was opened.?

A. It does; yes, sir. At the end September 15th the balance shown by the account was transferred to another ledger.

Q. Then this shows the beginning but not the end of any account they had with Riggs & Co.?

A. Yes.

Counsel for defendants here stated to counsel for complainants that it would be necessary to have the original books.

The WITNESS: As far as the accounts are concerned, that one ledger will show nothing else but that. If you want to see
550 the account from the beginning up to date, it will take three or four ledgers, but that covers every single item from the time the account was opened up to and including September 15th, 1888. I have no objection to bringing the books here except that they are so bulky.

Q. Was Mrs. Patten's account in the same book with these?

A. Yes, sir; up to September 15th, 1888. All the accounts are in there. We usually transfer them every two years.

Q. All of your depositors during the same time have accounts which appear in the same book?

A. No; because we have four individual ledgers, say from A to D, inclusive; from E to K, inclusive, and from L to R, I think it is.

Mr. GLOVER: We will have to have the books, Mr. Davis.

Mr. DAVIS: Mr. Flather, will you get that ledger?

The WITNESS: How many do you want?

Mr. DAVIS: Only that one; simply to verify that.

Q. Please look at pages 258 and 259 of the book which I now hand you and state whether the writing on those two pages is yours.

A. The handwriting is mine.

Q. When did you make it?

A. I do not know.

Q. For whom did you make it?

The WITNESS: I do not know that I have any right to answer that.

551 Mr. GLOVER: Why are you in doubt as to why you have a right to answer it or not?

The WITNESS: Well, I did not make this for the estate of Mrs. Patten, nor you, nor Mr. Davis, nor any one here, that I know of.

Q. For whom did you make it?

The WITNESS: I refuse to answer.

Mr. GLOVER: I will make you answer.

The WITNESS: You may, but you will have to do it. I do not know your object in asking it; that is why I do not answer.

Mr. GLOVER: My object is none of your business.

Mr. DAVIS: I object to this question as irrelevant and immaterial and not responsive to the direct examination.

Mr. GLOVER (to the witness): What is your reason for refusing to answer this question?

The WITNESS: I did not come down for that purpose. I came down to testify to the accuracy of that account that I brought.

Q. Is that the only reason?

A. That is one of the reasons.

Q. What are the others?

A. As I said before, I want to know why I am asked to answer before I answer.

552 Mr. Davis submits that as this line of inquiry has already been objected to as irrelevant and immaterial and not responsive to the direct examination, and as the witness has refused to answer unless required so to do by the court, his reasons are immaterial.

Q. I will ask you this question: Under the head of list of bills against the estate of Anastasia Patten which have been paid by the executrices appears the following item:

"John M. Glover, private car, Boston to Washington....	$259 00
Telegram.....	4 32
Total	$263 32"

I will ask you if that was not paid out of the account of Mrs. Anastasia Patten and not by the executrices.

Mr. DAVIS: I repeat my objection.

The WITNESS: I refuse to answer.

At this point the witness was excused to procure the ledger desired, and the examination of William M. Stewart, the witness hereinafter reported, was had.

At the conclusion of the examination of Mr. Stewart, the witness Flather having returned, his examination was resumed, and he further testified as follows:

By Mr. DAVIS:

Q. Mr. Flather, have you now your ledger with you to which you have referred this morning?

A. Yes, sir.

Q. Will you be good enough to turn to the accounts of the Misses Patten, of which I inquired this morning, and read to me
553 the account of Miss Helen Patten from its commencement up to and including September 15th, 1888?

Mr. Davis here tenders counsel for the defendants the transcript presented this morning for his comparison as the witness reads.

The witness, proceeding to make the comparison, says that the first column of figures to the right of each of the debit and credit accounts indicates the page of the journal from which the item to which the figure relates was taken.

The witness, proceeding, reads as follows:

"1888, January 5, by deposit, 527, $150." That "527," the witness says, is the page of the journal referred to.

After comparison with the original, Mr. Glover admits the Exhibit W. J. F. No. 1, to be a correct transcript from the books.

Cross-examination (resumed).

By Mr. GLOVER:

Q. Now, Mr. Flather, I will ask you to turn to the account of Anastasia Patten in this book.

The WITNESS (to Mr. Davis): Shall I do it?
Mr. DAVIS: Yes, sir.
The witness here turned to the account desired.

554 Q. (After examining the account.) I will not ask you any questions about that account at this time. Now, have you considered the answering of that question I asked you? I thought perhaps on reflection you would conclude to answer it. Are you prepared to answer all the questions that you previously refused to answer?

The WITNESS: I do not want to be obstinate in the matter, but I do not want to say anything that I should not say.

Mr. DAVIS: I instruct the witness, in response to his inquiry, that he is under no obligation at this time to answer these questions, and will not be under any obligation at any time unless the court directs him to answer them, and I insist that the questions are irrelevant and immaterial and not responsive to the direct examination, for which reasons I object to them.

Mr. GLOVER (to the witness): You have to decide whether you will answer or not.

The WITNESS: I decline to answer them.

Mr. GLOVER: On what ground?

Mr. DAVIS: I object.

The WITNESS: I do not think it is necessary to state the ground.

Mr. GLOVER: [If I had† [you would have you before the court or in jail. ha- give me that 3 minutes.‡] I will get you there yet.*] I shall not hold the testimony open for the purpose of forcing this witness to answer the question.

WM. J. FLATHER.

555 Subscribed and sworn to before me this 28 day of May, A. D. 1891.

ALEXANDER H. GALT, *Examiner.*

WILLIAM M. STEWART, a witness produced on the part and behalf of complainants, being first duly sworn, deposes and says:

By Mr. DAVIS:

Q. Will you state your name, age, residence, and occupation?

A. My name is William M. Stewart; aged 63; residence, Carson City, Nevada; occupation, lawyer.

Q. You are also, I believe, a Senator from the State of Nevada, and have been for some years?

A. I am.

[* Words in brackets erased in copy. † In ink in copy. ‡ In pencil in copy.]

Q. Did you know the late Edmund Patten, of Gold Hill, Nevada?
A. Yes.
Q. How long did you know him?
A. I knew him from 1861 to his death.
Q. And did you know his widow, Anastasia Patten?
A. From about the same date to her death.
Q. You know the five children of Mrs. Patten?
A. I do.

Q. Do you remember the occasion of Mrs. Patten's death?
556 A. I remember it; I was not present, but I remember the occasion; yes.

Q. After Mrs. Patten's death it appears in evidence here that she died in Portland, Maine, and her body was brought here and her children returned to this city. After her death and after the return of her children to this city had you any relation to them in connection with the administration of their mother's estate?

A. Yes; I had been a kind of intimate friend of Mr. Patten, having been connected with him in business matters—that is, I was attorney for mining companys and other business in which he was interested, and that brought us together a good deal. After his death I saw a good deal of Mrs. Patten, and she naturally talked to me a great deal about her business, and after her death her daughters, knowing the fact, came and talked to me, and I was desirous of assisting them in any way I could as an old friend of the family.

Q. When did you first know of the provisions of Mrs. Patten's will—how long after her death, if it was after her death?

A. It was after her death; I cannot remember dates.

Q. Do you remember the occasion on which you became acquainted with its contents?

A. Well, they were desirous of proceeding to the settlement of this estate.

557 Mr. GLOVER: I object, Mr. Davis, to the declarations of Mrs. Patten; I do not know what is coming.

The WITNESS (continuing): And I don't know just how I came to see the will the first time; I don't recollect the circumstances; I know the will was brought to me and I saw it.

Q. Where did you see it?

A. It seems to me I got some information about the will by a copy or something before I saw the original will.

Q. Where was it, if you remember, did you first see the original will?

A. I think the original will was in the safe-deposit company.

Q. When you first saw it?

A. I think so; yes; I think I had seen a copy before that of the original will.

Q. Well, without reference to a copy of the original will, do you remember where you were when you first became acquainted with the actual contents of the will from reading the original or a copy?

A. I cannot fix the date.

Mr. GLOVER: It is understood, is it not, that all objections for irrelevancy and immateriality are understood without being made?

Mr. DAVIS: Yes.

The WITNESS (continuing): I do not remember where I first got information of it; it does not occur to me now where I was.

Q. Do you remember on any occasion reading the will or
558 a copy of the will in Mrs. Patten's house?

A. Yes.

Q. In what room in the house?

A. I think it was in the reception-room, the sitting-room, either.

Q. The room on the right as you enter from the east, you mean?

A. Yes.

Q. That is the room commonly called the library, is it not?

A. The library; yes, sir.

Q. Who were present on that occasion, if you remember?

A. I think that during the conversation all of the five daughters were present off and on; I do not know whether they were all present at the same time.

Q. Besides the five children and yourself was there any one else present that you now remember?

A. I do not remember; Judge Clark was there a good deal of the time. Whether he was present during these interviews or not I do not know. I think he was at the house; he was there considerably.

Q. Now, with reference to this interview in the library, what occurred as you now remember?

A. Well, it would be difficult for me to state all that occurred or be very definite about the transaction. There was a general discussion about the property of the estate and how it was situated, and the mother's estate, and what had been left by the father.

559 Q. Well, in that connection what, if anything, do you remember yourself to have said in the line of the will as to the relations of the daughters to their father's estate?

A. Well, I was making an inquiry as to what disposition had been made of the father's estate, if it had been settled, and so on; but I understood from the parties that Mrs. Glover had received about $100,000 from the father's estate.

Q. From whom did you understand that?

A. Well, I understood it from all of the parties, Mrs. Glover included. That is the impression that I got from the conversation that occurred.

Q. Do you remember making any remark yourself as to the simplicity or the difficulty there was of settling the estate in view of the situation as it was developed at that interview?

Mr. GLOVER: Objected to as leading.

A. Well, I probably remarked that it was a very simple affair, because I thought it was. I think I recollect that.

Q. Do you remember which of the young ladies at this interview first remarked that Mrs. Glover had had this sum of money from her father's estate?

Mr. GLOVER: Same objection. He has not said that anybody remarked that.

A. Well, it would be difficult to say which one. We were
560 talking altogether, and there was a good deal of conversation. Some one remarked it, and I made the inquiry, and my recollection is that Mrs. Glover assented that she had had that amount of money. Somebody inquired. There did not appear to be any controversy about that.

Q. Now, after this interview what, if any, part did you take in endeavoring to procure administration, the issue of letters testamentary on Mrs. . atten's estate?

A. Well, I got a gentleman to assist me to put in a petition, I think.

Q. Do you remember who that was?

A. Judge Upton.

Q. Will you look at the paper now shown you and state if you recognize it (handing witness the original petition for probate)?

A. That is the original petition; yes.

Q. Look at the paper now shown you and state if you recognize that (handing the witness the amended petition for probate).

A. Yes; I recognize that as the amended petition.

Q. Now, Senator, do you remember any occasion upon which you attended at the National Safe Deposit Co., in this city, in relation to the administration of Mrs. Patten's estate?

A. I do.

Q. Who were present on that occasion?

A. Mr. Glover, Judge Upton, and one of the Misses Patten.

Q. Do you remember which one?

A. Yes; Miss—this one (pointing to Miss Josephine).

561 Q. Look at the paper now shown you and state if you recognize that (handing witness Complainants' Exhibit No. 5).

A. Yes.

Q. Do you remember when you first saw that paper?

A. I saw that at the safe deposit for the first time.

Q. On the occasion of which you have spoken?

A. Yes, sir; on that occasion.

Q. Now, with reference to the seeing of that paper just shown you, when was the original petition for probate filed, before or after?

A. Before, my recollection is.

Q. And what do you say as to the filing of the amended petition?

A. The amended petition was suggested to my mind from that statement in the paper you showed me. What is that paper?

Mr. DAVIS: Exhibit No. 5.

The WITNESS: From this document, Exhibit No. 5, it appears that there was $101,600 due to each of the daughters from the mother in the administration of the father's estate, and the amount which Mrs. Glover had received appeared to be a payment, and

from all the facts before me I concluded that she had received her portion of her father's estate and that——

Mr. GLOVER: I object to that, of course.

The WITNESS: That is only an impression.

Mr. GLOVER: The witness is not the judge of the case.

562 The WITNESS: I do not propose to judge the case. I want to explain why that document was drawn in that way. It may have been under a misapprehension.

Mr. GLOVER: I object to his construing the instrument, which speaks for itself, and to this testimony, which seems to me intended to do away with the meaning of the instrument.

The WITNESS (continuing): And that her remaining interest was only her share of her mother's estate; that the personal property that existed was of the father's estate and belonged to the other heirs. This was simply my construction of the transaction, and the reason why that was drawn in that way (referring to the amended petition) was to conform to what appeared to me to be the facts. If my knowledge or the facts at the time were erroneous, then, of course, the petition would be wrong, but I considered it as a payment to Mrs. Glover of her share of the father's estate, and that the balance of the father's estate belonged to the young ladies, and that there was no use of filing a large bond to cover what was really their own property; that it belonged to them and there was no necessity for putting the papers in the way that would require them to furnish an unnecessarily large bond, because it was difficult to get a bond so large in amount at that time. I did not know where they could get it. That was the condition of affairs. I may have been mistaken.

563 Q. Do you know by whom this amended petition for probate was prepared?

A. It was prepared by Mr. Upton.

Q. And were you or not present at the time it was prepared?

A. Well, he submitted it to me. It was prepared at my suggestion. That was my conception of the situation. He agreed with me what he knew about it and we talked it over and that was our view of the facts, and it was not necessary for them to give a bond for their own money.

Q. Now, with reference to the assumption upon which you acted, what, if anything, was at that time up to that point said by Mrs. Glover that would give a contrary face to the transaction?

A. Well, I do not recollect any conversation with Mrs. Glover except the general conversation to which I alluded. I would say that, having had that conversation, in which it was said that Mrs. Glover had received about $100,000 or a little over, and then upon the examination in connection with it of Ex. 5, I came to the conclusion that the estate of her father, as far as she was concerned, was settled and relied upon that to be a fact and believed it to be a fact at the time.

Q. What was your understanding at the time as to Mrs. Glover's acquiescence or the contrary in such a view, if you had any such?

A. Well, I had no understanding beyond what I have stated at all.

564 Q. Now, after the time this amended petition was prepared did you know where it was signed, whether at Mrs. Patten's house or somewhere else?

A. Well, I think it was at the house; that is my recollection.

Q. Was it presented to the Misses Patten by you or Judge Upton, if you remember?

A. I think I was present and he was too; that is my recollection; about which matters I do not want to be positive.

Q. The paper appears to have been signed by the four Misses Patten and to have been verified by Miss Mary Patten before one R. H. Evans, notary public. Do you know who procured Mr. Evans to act as notary public on this occasion?

A. No; I do not remember.

Q. What was the first occasion of any knowledge on your part that the scheme of settlement of the estate which had occurred to you would be antagonized by Mrs. Glover or any one in her interest?

A. Well, it is hard to answer that question. In the beginning it appeared that there was controversy about minor matters, about the personal property; there was not a perfect understanding, and at the safe deposit my recollection is Mr. Glover remarked that this contract Ex. 5 was not signed by all; they were minors and not

565 bound by it, and there was some talk of that kind which indicated a diversity of opinion between them. I did not suppose it would——

Mr. GLOVER: Now, Senator.

The WITNESS: I will say this: It did not occur to me that there was going to be any serious controversy about the $100,000 matter if the minor matters could be adjusted.

Mr. GLOVER: I object to all of that as inadmissible. I was appealing to the gentleman's own idea as to whether the testimony was relevant.

Mr. DAVIS: I should have asked him to say it if he had declined.

Mr. GLOVER: Certainly it is inadmissible.

Q. What I wish for particularly to know, Senator, is whether at any time after the filing of this amended petition for probate you took any further steps in the interest of the Misses Patten in connection with the settlement of their mother's estate; and, if so, what form did such steps take?

Mr. GLOVER: I object to that as immaterial.

A. Well, the records ought to show what was thereafter done. The first instance, my recollection is, that Miss Josephine was appointed collector under provision of the law and acted for a time, and after that and during the time she was acting as collector an inventory was made.

Q. Those are not the matters about which I wish to in-
566 quire. I will ask you if you remember the circumstances of my coming into the case.

A. I do most distinctly.

Q. Now, what relation had you to my coming into the case, if you remember? I do not mean as to nominating me or anything of that kind.

A. Well, it became evident to me that I could not attend to it and give it the personal attention it required, and that after some controversy had arisen I saw that there would be a dispute between the parties and it could not be settled very harmoniously, and my functions then were practically ended.

I did not contemplate when I started in getting into a long lawsuit. I could not do that, and when the case got so that it was evident there was going to be a controversy in the courts, after conversation with the young ladies, we came to a mutual conclusion that they must have an attorney here to attend to the business regularly and I suggested you, and they made some inquiry and came to the conclusion that you were the man they wanted, and I took you over and introduced you to them and you were employed, since which time I have done nothing in the case. I did not intend when I started in as their friend, I did not expect to attend to the settlement of the estate if it were going to be a controverted matter.

Q. Now, Senator, look at the paper now shown you and state if you recognize that.

567 The WITNESS: Was this paper filed?

Mr. DAVIS: No.

A. Well, I do recognize it. I have a recollection that——

Mr. GLOVER: Please do not testify about it until I see it.

The WITNESS: I was going to say I have a recollection about a paper of that kind having been prepared or drawn up after it was apparent that there was to be——

Mr. GLOVER: Litigation?

The WITNESS: No; after it appeared that the amicable settlement would not go through and there was contemplated a proceeding to have the court settle it. I remember drawing up the paper with a view of proceeding that way, and when we found that my diagnosis of the case was not going through on the basis that was started in on I think I prepared that myself.

Q. Do you know how it came into my possession?

A. Yes; I do not know——

Mr. GLOVER: Indulge me a moment, please.

Counsel for the defendant- here read the paper.

Mr. GLOVER: I object to any testimony concerning this paper because it appears to have been a paper drawn by the witness as counsel for the complainants in the case at some date unmentioned, the transaction being entirely between them, and it is not admissible either as a declaration of the witness or a declaration of others or on any other ground.

568 The WITNESS (continuing): My recollection is that I turned it over to you (to Mr. Davis) the time I turned the business over to you.

Q. Do you remember where?

A. I think it was at your office.

Q. Was it not at my house?

A. Probably it was at your house. I think I went down to your house and turned it over to you at the time we sought you—Miss Josephine and myself—and employed you.

Q. Do you recognize this paper (handing witness a paper)?

A. Yes; this was a paper that I handed over to you at the same time.

Mr. GLOVER: Same objection.

Q. Now, Senator, do you remember the day of the week on which you and Miss Josephine Patten came to my house after having failed to find me at my office?

A. Well, I think it was Saturday night; I am not certain. I know we did not find you in the day, and my recollection is that the week was about exhausted and I was very anxious that it should get in your hands so that you could attend to it, as I was very busy in the Senate.

Q. Do you remember coming to my house the next day, Sunday, when Miss Josephine was not with you?

A. Yes.

Q. Who was with you? Who was your clerk at that time?

A. Isaac Frohman.

569 Mr. GLOVER: I object again to this evidence as simply showing conferences between two attorneys of the complainants, having no bearing on this case. Moreover, if there is an undertaking here to show that this was all a mistake—this amended petition—then there is no foundation for showing any such thing in the record or the evidence in the case. It is inadmissible under the pleadings.

Q. Do you remember whether or not he was with you on that occasion?

Mr. GLOVER: He has not said he was there on Saturday, yet.

The WITNESS: Yes; I said he was there on Saturday. Yes; my recollection is that he was.

Q. Can you fix the year and month when these papers were handed to me by you?

A. (After examining paper.) Well, it was shortly after Miss Josephine, as collector, had filed her inventory; probably the last of January of 1889.

Q. Well, whether the last part of January or some time in February. What is your best recollection as to the time after the inventory was filed?

Mr. GLOVER: Objected to as leading.

A. It might have been two or three weeks; I could not tell exactly.

Q. Now, do you know why these papers were not filed in court at that time?

Mr. GLOVER: Same objection.

570 A. Well, I know that rather from consultation with yourself. The way I presumed that there was a difficulty about the inventory was they did not accept the inventory they had filed.

Mr. GLOVER: I protest that your conversation with Mr. Davis is not evidence.

The WITNESS: Of course, if it is incompetent——

Mr. GLOVER: You can prove your case that way very easily by just having you and Mr. Stewart talk it over.

Mr. DAVIS: I now offer these papers in evidence as Ex. W. M. S. No. 1 and Ex. W. M. S. No. 2.

Mr. GLOVER: I object to the same on the ground that they are irrelevant and immaterial; that they simply consist of and go to show consultations between the attorneys of the complainants, which are not in any sense or by any possible construction evidence against the defendants. Moreover, because if they are intended to show that the amended petition for probate, which states under oath that the young ladies were, with Mrs. Patten, owners of undivided shares of all the property that passed by her will, that it was made under a mistake, but it does not tend to show any mistake, and that the pleadings in the case would not permit even competent evidence of a mistake.

Q. Senator, do you know whether this Exhibit No. 2 was ever presented to Mrs. Glover or to any one for her to be signed by her?

571 Mr. GLOVER: Same objection; immateriality and irrelevancy and as not bearing on any issue in the case.

A. Well, I directed it to be presented and——

Q. You were not present on any occasion when it might have been presented?

A. No.

Q. And have no personal knowledge that such was the case?

A. No.

Q. Do you know, independently of the record, when the inventory of the executrices was in fact filed?

The WITNESS: The inventory of the executrices and not of the collector?

Mr. DAVIS: Yes; not of the collector.

A. No; I do not.

Q. Now, Senator, in the light of these two papers which have been exhibited to you and in the light of the amended petition for probate itself, which has heretofore been shown you, what do you say as to any acquiescence or the contrary on the part of Mrs. Glover or Mr. Glover acting for her in the understanding that Mrs.

Glover had been paid what was coming to her from her father, and that therefore the amended petition for probate was prepared in that understanding?

The WITNESS: I hardly understand the question. I have stated about all the knowledge I have on the subject.

Mr. GLOVER: I object to that on the ground that the
572 amended petition for probate shows better than the testimony of any witness or of any 20 witnesses.

Mr. DAVIS: I withdraw the question.

Cross-examination.

By Mr. GLOVER:

Q. I want to go over what occurred at the safe-deposit Co. as near as we can to see about that. In the first place, it was a formal opening of the safe-deposit box which had stood in the name of Mrs. Patten, at which all the parties in interest were present or were represented?

A. That was the understanding, or appeared to be.

A. Mrs. Glover was not there?

A. No.

Q. But I came with a letter to the president of the company asking that I should represent her, did I not?

A. You did, I believe; you appeared there for her.

Q. John E. Beall was there, was he not?

A. I think he was; yes.

Q. And he and Miss Josephine took out the contents of the box to see what was in the box and then replaced them, did they not?

A. Yes.

Q. At this time this written agreement to which you have
573 referred, dated Sept., 1885, marked No. 5 on the back, was produced, was it not?

A. It was.

Q. Was it taken from the box or brought there with your party?

A. I think it was taken from the box; that is my recollection.

Q. That is produced from the box. Nothing was withdrawn from the box?

A. Produced from the box.

Q. Was there anything withdrawn from the box that day or was the box simply examined?

A. Well, about that I could not be so positive, but I have the impression that there was a note of Beall's to the four young ladies for about $45,000, which was taken by them to be their individual property, having received that from their mother, and, whether it was taken away or not, they claimed it to be theirs; whether they took it away I do not recollect; I know there was some talk about it. If that was not taken there was no paper taken. My impression is that that was taken, but I could — say.

Q. Do you remember a conversation of this kind between Mr. Snyder, yourself—this is to refresh your recollection—and Mr. Beall touching these very notes, certain notes that were signed by Beall

and payable to the order of the four young ladies? Mr. Beall said, "Those are my notes," and he also said, "There is a note there overdue; I had better take it out and pay it." Mr. Stewart said,
574 "Take out nothing," and Mr. Snyder said, "No; Mr. Beall, if you want those paid you can pay it and get the notes subsequently." Was not that the conversation?

A. That might have occurred.

Q. And is it not a fact that that was purely an investigating visit to the box to find out what was there, and, none of the executrices having qualified, it would not have been in order to withdraw the assets and none were withdrawn?

A. None of the assets were withdrawn—that is, I have no recollection as to their being withdrawn. It seems to me that something of that kind occurred.

Q. Now, after that in the first place, Senator Stewart, this was a very small room, was it not?

A. Yes.

Q. There were five or six people in it?

A. Yes.

Q. And what was said could be heard by anybody else?

A. Probably; yes, unless otherwise engaged.

Q. Do you remember when this agreement was produced that I have just shown you, marked No. 5, signed by the five daughters in 1885, that you said to me, "Mr. Glover, that is our outlet to avoid giving a heavy bond," and I said, "How so?" and you said, "Why, don't you understand?" and then Judge Upton interrupted and said, "Let me tell him. These three young ladies are all partners with their mother; she never made an investment that they did
575 not assent to, and now, conceding that their interest is only worth $100,000, then set aside $100,000; that would leave about $125,000 or $130,000, and you can give a bond for double that"—something to that effect?

A. Well, I do not know that the word "partner" was used, but I think the idea was. My impression, as I recollect it—it is my idea that Mrs. Glover having her $100,000, the balance of them——

Q. I am coming to that a little later. Now, let me read you the conversation as I remember it. I said, "Mr. Upton, it would not be fair to the court. We ought not to deceive the court, although we might desire to give a small bond. I have no objection to your stating all the facts; that this property was all in Mrs. Patten's name, and that you contend that the young ladies are part owners, but we must deal fairly with the court, and tell everything about it. If you set aside $100,000 as an undivided interest for each of the young ladies, of course you will set aside $100,000 for Mrs. Glover also; then there won't be any bond given." Then said Miss Josephine—I am giving you this in its continuity, so that you can possibly recollect all that passed—then said Miss Josephine, "I do not know what we come here to talk to Mr. Glover for every day, for he has got nothing to do with this estate. I won't meet with him any more at all." I said nothing and nobody said anything. Then

said Miss Josephine," Mr. Stewart, does that mean that Gussie
576 is to get $100,000 more than me?" Senator Stewart said, "We will talk about that afterwards." Then said Miss Josephine, "We will never consent to that," etc. Now I will ask you if that does not refresh your recollection to the extent as to what occurred.

A. Well, I recollect that there was some consultation between you and Miss Josephine about to that effect.

Q. In which Miss Josephine became a little angry, did she not?

A. Yes; she became a little angry, but I did not understand from the conversation—I cannot remember all the conversation that occurred there—I did not understand from the conversation that settlement was not going to be made according to that contract, except my recollection is you made a remark to me something like this, that they were not bound by it, and I replied that that would not make any difference whether they were bound by it or not; but if it was not a fair settlement, if either one should commence proceedings, it would inure to the benefit of all equally, because they were equally interested in all, and it was just as well to settle by that arrangement as any other that could be made, and I went away with the supposition that——

Mr. GLOVER: I do not want an argument and I do not want your suppositions. I am asking you if these conversations did or did not occur and if no part was said, or, if any part was said, which part did occur.

577 Mr. Glover here repeated the last question but one with the following addition: "I was present when mama gave those bonds to sister and one of my sisters was present with me, and mama said to Gussie, 'Gussie, that is from your father's estate;' that is all she said. 'Why,' said Miss Josephine, 'Mrs. Glover does not remember that;' that is the end of the conversation, with the emphasis on the 'that.'"

A. Well, I recollect substantially that conversation, but I did not pursue it further on account of the controversy between you and Miss Josephine. I did not want to talk about that and didn't ask you for any explanation when you talked about setting aside another $100,000. I did not suppose you intended to ignore the $100,000 she had received. I did not go into any other explanations; it did not change my opinion as to the situation.

Mr. GLOVER: I am not requesting your opinion.

The WITNESS: But the conversation was changed from between you and me by your conversation with her, and it was broken off and we did not have a full explanation and there was no chance for you and me to get——

Q. You are undertaking to say here, are you not, and to state in a condensed form that when you drew that petition in that case it was on the assumption that all the parties would agree to it?

A. No; that it was consistent with the original agreement that had been made and all the parties would agree to it. It
578 would be settled that way.

Q. Then it was not upon the assumption. I have under-

stood your testimony to mean this: That if you had known that there was to be any objection by Mrs. Glover to be charged with this $100,000 as money received from her father's estate that you would not have drawn the amended petition for probate that way. If I have misunderstood that, then my question is on a mistaken basis.

A. If I had supposed that there was any reasonable doubt that she would be charged in that way——

Mr. GLOVER: I object to that. You are the attorney and you are also arguing the case.

The WITNESS: If I had supposed there had been any valid objection to that settlement, I would not have drawn it in that way.

Q. Your views were somewhat colored by being attorney for the other side, were they not, naturally?

A. Well, I think not. I think I was as friendly with one side as the other. I felt the same interest in seeing fair play to all parties.

Q. You were not representing Mrs. Glover?

A. No.

Q. You were representing the other side?

A. Yes.

Q. Is it not possible in human nature, Senator, that you should attach more consequence to statements of others than you would to those of Mrs. Glover?

579 A. That might be, but I would not have drawn it in a way for them to have taken anything belonging to Mrs. Glover. I did not feel that relation between the parties. I wanted to see it settled just as it was, and if I had thought that was not the fact I would not have drawn it in that way.

Q. Still, that is not the question. I am not insinuating that you were unfair or would be because you were the counsel on the other side; not at all. I am merely trying to get for the benefit of the court a statement in condensed and intelligible shape as to whether you mean to say that you drew that petition under a mistake, which mistake is as follows: That it embodied a state of facts, which was agreed to by all parties, and that if you had not supposed that there was that agreement that you would not have put that petition in that shape; or does it mean that from the circumstances, so far as you had investigated them, you believed that the facts justified the drawing of the petition in that shape, and therefore you drew it in that shape, which is a very different thing?

The WITNESS: In justice to myself, I wish to make a little further explanation why I came to that conclusion.

Mr. GLOVER: First the answer, Senator, then the explanation; that is the due course of things.

A. I thought the facts justified it, and not having concluded the conversation with you, it having been diverted to you and
580 Miss Josephine, I did not attribute much importance to what you said, because if the $100,000 has been drawn out, which I did not have an opportunity to call your attention to, why Mrs. Glover would not have had the same claim after that had been

drawn out, and she would not be entitled to her $\frac{1}{5}$ of it until they had each received the $100,000 apiece; and another reason why I got this impression that they had a right to treat it as their property was that I had understood that prior to Mrs. Glover's receiving the $100,000 that the father's estate had been invested in bonds, and that after this payment to her there was a change in the investment and they were all together, and it necessitated the change of investment that it might be treated as part of their property, and there was no necessity for giving a bond for it when it would not have to be accounted for.

Q. Now, what reason, Senator, had you to suppose, when I suggested the setting aside of $100,000 for Mrs. Glover, that I was not equally familiar with the facts as you, or what reason had you to suppose that what I said on the subject had no significance?

A. Well, I did not suppose that you would claim a repayment of the $100,000 when called to your attention; it had been once paid and I did not suppose you would claim a repayment of it. I took it for granted that you had overlooked that in your statement.

581 Q. That is, you were assuming that I would take your client's side of the case?

A. Well, I did not think there was any side about it. The question was how much had been paid and how the account stood.

Q. That depends, of course, upon its being established that Mrs. Glover made this admission of which we speak, does it not?

A. Not at all.

Q. It does not depend on that? You assume that in your diagnosis of the case that Mrs. Glover had, as you say, admitted that she had received her share of her father's estate.

A. I do not think it could depend on that; it would depend on the fact that she had received it.

Q. You assumed that fact, did you not?

A. I did.

Q. You thought I could not doubt that?

A. I thought the facts were as I have stated, but I did not know whether you would doubt it or not. I did not suppose you would when you came to investigate it, although I did at the time say that she should have an equal share.

Q. Well, now, Senator, this amended petition for probate does not bear Mrs. Glover's signature, does it?

A. No.

Q. I will show you first the original petition (handing witness a paper).

582 A. No; neither of them.

Q. Does not the original?

A. (After examining.) Yes; the original does.

Q. And the amended, filed a week later, does not, does it?

A. No.

Q. And between those two dates Mrs. Glover had left the residence of Mrs. Patten and gone to the Richmond hotel, had she not?

A. Yes; I believe so; that is my recollection.

Q. And Mrs. Glover was not present when you drew the amended petition?

A. She was not.

Q. And it was drawn after you had opened the box of the safe-deposit Co. and had seen this paper of 1885?

A. Yes.

Q. And a copy was taken of it then, was it not, for use of the parties in interest?

A. Yes.

Q. And you sent Mr. Clark, of California, down to the Richmond hotel to get Mrs. Glover's signature to the amended petition for probate, did you not?

A. Well, I have some recollection that that occurred; I am not positive about it. I think it was sent to her.

Q. And she refused to sign it, did she not?

A. She did not sign it.

Q. And her name is not on it now, is it?

A. It is not.

583 Q. And you went to the orphans' court the next day succeeding the opening of the box and filed it without her signature, did you not?

A. I did.

Q. Do you remember, Senator, a discussion with me—I will ask if you remember receiving this letter from me at or about this time.

Mr. DAVIS: Are you about to read from what you claim to be a copy of a letter sent by you to Senator Stewart?

Mr. GLOVER: The best way to see about what I am about to do, Mr. Davis, is to let me read it.

Mr. DAVIS: Mr. Glover knows full well that it would be improper for him to read to the witness anything purporting to be a copy of any paper and to interrogate the witness about it without doing that which the rules of evidence prescribe as a condition precedent, and I object to any interrogation of the witness upon any paper purporting to be a copy of another without the production of the original for inspection of the witness or the laying of the proper foundation otherwise for its introduction.

Counsel for the defendant here read the following letter:

"WASHINGTON, *Oct. 3rd*, 1888.

Senator Stewart, Senate chamber, city.

584 MY DEAR SIR: In pursuance of your suggestion I have examined Dennis on Probate Law. I fail to find any statute of the United States on the subject of advancements. The provision to which you refer seems to be found on page 81, being a provision with which I am familiar in the law of Maryland. This act was passed in 1799, and appears without change in the Maryland Code of 1860, sec. 126, art. 93, and in the Code of 1878, sec. 7, page 416. Sec. 31, page 407, of the same code defines the term and limits its effect to real estate. The case of Cole against Simmonds *et al.*, 45th

Md., 346, it is decided that the question of advancement cannot arise at all except in case of absolute intestature and the doctrine previously laid down in Stewart and wife against Patterson's executors, 8th Gill, Md. Therefore, if Mrs. Glover agrees to have the bonds given her at her marriage charged against her in the distribution, it is in the nature of a complete gift on her part to her sisters and should be received and accepted—that is, appreciated—accordingly. Our understanding is that in the proceedings about to be taken to get the estate into shape you will represent the other heirs only and I will represent Mrs. Glover only. We prefer this because it will give the young ladies the benefit of independent advice of the highest order employed by them individually and free me from some of the embarrassment of my position.

Yours respectfully, JOHN M. GLOVER.

Senator Stewart, Senate chamber, city."

585 Did you ever receive a letter of that kind, Senator?

A. I think I did substantially, but I cannot remember the language of it.

Q. Now, do you remember—you know Mr. Clark, of California?

A. Yes.

Q. He was a friend of Mr. Patten, a friend of the young ladies, and an acquaintance of yours?

A. Yes.

Q. Shortly after Mrs. Patten's remains returned from Portland do you remember Mr. Clark bringing me to your residence—where was the residence then?

A. It was 1314 I street.

Q. Yes; do you remember that?

A. I remember your being there, but I do not know that I remember the circumstances of your coming.

Q. I will ask you if this did not occur—if I did not come there with Mr. Clark and meet you in the hall and we went into the parlor and sat down; if you did not say to me in substance as follows: "Now, Mr. Glover, I am a friend of this family, all of them, and I want to know from you whether there is going to be any trouble about this $100,000." I will ask you if I did not say to you at that time that Mrs. Glover had felt and I had agreed with her that if that question was to break up the family that she was willing to account for it as an advancement, but that she reserved all questions of the right to compel her to do so; that she paid it as

586 a voluntary matter, and that you said to me, "Well, that is very good of her or noble of her, and I will see that she gets credit for it; she ought to have credit for it." You then said to me, however, "You had better look at the law on the subject," and it is so and so, indicating something about these statutes. Do you remember a conversation similar to that, Senator?

Mr. DAVIS: Objected to as irrelevant and immaterial and incompetent and not responsive to the direct examination.

A. Well, I will answer it. I think that a conversation substan-

tially like that took place, but I was not aware at that time that this $100,000 was a payment, and my recollection is I did not know of the contract. That was before we met at the safe-deposit box, was it not?

Mr. GLOVER: I think it was; yes.

The WITNESS: At that time I did not know that it was a payment, and supposed there would be a question of how it was advanced out of her estate, but afterwards when I ascertained the facts I ascertained that it was a payment out of her father's estate, which changed my view of the question altogether.

Mr. DAVIS: I withdraw my objection to the question.

Q. Senator, are you on the Judiciary Committee of the Senate?

A. I am not. I have been.

Q. You are a lawyer of long practice, however?

A. Yes.

587 Q. How many years, Senator?

A. About thirty six or seven years.

Q. Senator, you communicated the substance of this interview to your clients, of course, yours and mine and Mr. Clark's?

A. I do not know that I did. I think Mr. Clark was talking something about it. I think I talked to them about it afterwards. I think they got it from Mr. Clark, something in regard to it.

Q. I want to ask you a little formal question here about the law of community in the West. It is stated in the answer of Mrs. Glover in this case as follows, and I want to ask you whether—you are from Nevada yourself, are you not?

The WITNESS: I am.

Mr. GLOVER: This statement is made in the answer: "By the laws of Nevada, in which he is domiciled (meaning Edmund Patten), and of Nevada and California, in which said property was situated, the titles to the said estate vested at his death in his widow, the mother of the respondent and petitioners, the said Anastasia Patten, as to one undivided moiety and in his children, this respondent and the petitioners, in equal parts as to the other undivided moiety, the said Edmund Patten having died intestate." I have rather confused that, but do you get the idea?

A. Yes.

588 Q. Is that a correct statement of the law?

A. I think it is. That is my recollection of the statute.

Q. Senator, I notice that Mr. Upton signs his name to the amended petition for probate. Will you please see if that is his signature (handing witness a paper)?

A. Well, I think I wrote it.

Q. You think you wrote his name?

A. I think so.

Q. Well, now, will you please examine the original petition and see if you also wrote his name there (handing witness paper)?

A. No; I should think he wrote both of the names there.

Q. Well, either you or he wrote his name wherever it appears, did you not?

A. Yes; I think so.

Q. Well, now, was Mr. Upton acting as attorney for the young ladies or solicitor at that time as well as you?

A. Well, I got Judge Upton to assist in the matter because I had not time to attend to it. I was rather acting as a friend and could not attend to details, and I got Judge Upton for that purpose.

Q. Well, that is a question of who employed him. I am asking whether he was not acting as attorney for the young ladies.

A. He acted in just that capacity; I got him to assist.

Q. You got him to assist you in acting for them?

A. Yes.

589 Q. Was he present in that capacity at the safe-deposit company when the box was opened? He was not there out of idle curiosity, was he?

A. I suppose he was there in that capacity.

Q. At the interview at the house was he present in that capacity?

A. Yes.

Q. You remember, Senator, after this litigation was on—possibly before the petition was filed to adjudicate the claims, but after the parties had taken a hostile attitude—do you remember having several interviews with me at your office—where was it? Somewhere——

The WITNESS: On I street?

Mr. GLOVER: Yes; on I street.

A. Yes.

Q. Do you remember at that time I came to you with a view to adjusting the difficulties between the parties?

A. Yes; I recollect that was the object of it.

Q. Senator, did I not at that time indicate a desire on Mrs. Glover's part and mine to meet the young ladies half way in a settlement of these questions?

Mr. DAVIS: Objected to as manifestly incompetent and inadmissible, and, further, as being not responsive to the direct examination.

A. Yes; you stated that you wanted to make a settlement and were willing to make concessions from your standpoint of the controversy.

590 Q. Well, now, you also indicated a desire to adjust matters, did you not?

Mr. DAVIS: I object for the reasons before given and because any communications that passed between Mr. Glover and Senator Stewart under the conditions inquired of, whether as communications between counsel of the respective parties or an attempt at compromise, are incompetent and inadmissible.

Mr. GLOVER: I will say to you that the object is not to prejudice your case by showing that you offered concessions at all; nothing of that kind was said that I remember, because I did not mean to draw it out.

A. I was very anxious to see the matter settled amicably, and

always have, and undoubtedly so expressed myself, deprecated any controversy very much.

Q. When that series of negotiations, that series of interviews involving an attempted negotiation ended, was it not with this statement from you that you could not bring your clients to make an adjustment, and that Miss Josephine was quite prejudiced or disposed against a settlement?

Mr. DAVIS: Objected to as before and as being a gross violation of the rules of evidence in calling for a statement from the witness, who is treated by the examining counsel as counsel for the complainants at the time inquired of.

591 Mr. GLOVER: I think, perhaps, that question is not fair and I will not insist on an answer to it.

Q. (Handing the witness the answer of the co-executrices to the petition of Augusta P. Glover, bearing the mark, "filed in the office of the register of wills June 9, 1890.") Will you be good enough to look at the signatures to that paper. I will ask you first if you have seen the signatures of the young ladies and if you think you would know them.

A. I am not an expert in signatures. I have seen their signatures and I should say that those are their signatures. I have seen them write.

Mr. DAVIS: I admit that those are the signatures of the Misses Patten.

Mr. GLOVER: I just proved that for identification.

Q. You have stated, Senator, that when you drew this amended petition for probate or approved it that you did so because you had concluded from your inquiry into the facts that deducting $100,000 as having passed out to Mrs. Glover——

The WITNESS: Having been paid to her?

Mr. GLOVER: Yes; there remained about $400,000, and that the young ladies, you thereby concluded, owned the balance of their father's estate?

A. Yes.

Q. Was that what you meant by stating in the petition,

592 inserting in the petition these words in substance—I won't go over the language because it is long, unless you wish to see it: "That the undivided share of the decedent was estimated to be worth $120,332" (handing witness a paper)?

A. Yes. I have not the figures before me. It was figured up after they were paid there would be so much of the estate in it.

Q. Well, the term "undivided share" indicates part ownership, does it not?

A. Well, perhaps it would. My idea was simply this: that if Mrs. Glover had received her proportion of her father's estate and given them the same portion that there would be so much left that would belong to the estate legitimately.

Q. Well, that property that had been Edmund Patten's turned out at Mrs. Pattens' death to have been invested with her own funds

in her own name, did it not? You found no separate investments in the name of the wards?

A. Well, it was not in the names of the wards, but I understood——

Mr. GLOVER: Don't state what you understood. I am asking what facts appeared to your eye when you made the examination. I will restrict the question to this: Did you in your inquiry into the condition of the estate find any real estate the title to which indicated on its face that it was held as guardian or any per-
593 sonal property which had the same tokens or sign-manual attached to it?

A. Nothing; nothing to indicate that from the papers.

Q. Now, Senator, you were present, I believe, at the register's office in this District and before Judge Cox on the day when Miss Josephine was appointed collector?

A. Yes.

Q. Do you remember an interview with me in the hall of the court-house in which you suggested to me that it would be well or might be well to have one of the gentlemen connected with Riggs & Co. banking-house appointed collector?

Mr. DAVIS: I object to the question as irrelevant and immaterial and incompetent.

A. Well, there was some conversation about that. I wanted to make it entirely agreeable to everybody.

Q. Now, Senator, didn't I agree to that; didn't I say all right?

Mr. DAVIS: Same objection.

Mr. GLOVER (continuing): Didn't you then go off and have Miss Josephine appointed anyhow?

A. Well, my impression is that you were favorable to something of that kind, but there were some objections to it, the expense of it and so on—some objections—but I do not remember what they were now.

Q. At any rate, after the conversation you proposed Miss Josephine, did you not?

594 A. Yes.

Q. And she was appointed?

A. Yes.

Q. I resisted the application, did I not?

A. You did.

Q. And the court, I believe, made some conditions on the subject of commissions?

A. Yes; commissions was the objection to appointing an outsider. The young ladies did not want to be charged with that commission, and I did not want them charged with it. I know that the commission was the point.

Q. Between you and your clients?

A. Yes, sir; between myself and client, and she agreed to serve without commissions.

Q. But when we got before Judge Cox my objection was of a

general nature, was it not, in addition to raising the point of commission? You remember I made a little argument there?

Mr. DAVIS: Same objection.

A. I remember you made a little argument. I was trying to refresh my memory.

Q. It was a very poor argument, because it didn't win?

A. You were opposed to her appointment.

Q. Now, will you be kind enough to fix, as nearly as you can, the time when you, as you say, turned this case over to Mr. Davis?

A. Well, I do not know as I can fix that date.

595 Q. No; that would not be reasonable; I mean approximately.

A. My general recollection is that it was after the objections had been made to the inventory.

Q. The collector's inventory?

A. Yes; the collector's inventory; when that date was I could not say. I know this: that I saw I could not attend to it.

Q. Senator, you have continued to advise as much as your leisure would permit in reference to this case, have you not?

A. I do not think that I have given any advice since I was out of it. I may have had some slight conversations with Mr. Davis, but I have not been advised as to the different stages of the proceedings.

Q. Slight conversations about what?

A. About the subject. I do not think I have given any advice. I mentioned to him once or twice that the legatees out in California were anxious for their money, and they had spoken to me about it, and I think I spoke to him about it.

Q. They have not been paid yet, have they, Senator?

A. I do not know.

Q. They have not to your knowledge?

A. I have no knowledge about it at all.

Q. Nothing was said about the desirability of using you as a witness when you withdrew, was there, Senator?

A. Nothing. I did not expect to be a witness, but Mr.

596 Davis insisted yesterday that I must come here or he would subpœna me. If I had expected to testify in the matter I should have taken a little more pains to refresh my memory as to details.

Q. You have said this morning that your memory was very bad, did you not?

A. Well, it was when I started in; it was not so clear as to names, but I believe it got all right when I settled down to thinking about it.

Q. I think you said in your direct examination that it might have been two or three weeks after the collector's inventory was filed that you, seeing the amount of work on hand, procured Mr. Davis?

A. I did not intend to be confined to any exact time. I was very busy at the time and could not fix that date, but it was after I saw

that it was going to require attention constantly, after the inventory was objected to.

Q. I will ask you one question more. Do you know Mrs. Glover's signature also?

A. Well, I think I have seen it. I do not know whether I ever saw her write or not.

Mr. DAVIS: I will admit that that is Mrs. Glover's signature.

Q. The dispute, Senator, over the inventory was on account of the omission therefrom of this $45,000 note, was it not?

Mr. DAVIS: Objected to, as the objections to the inventory
597 in writing speak for themselves.

Mr. GLOVER: The witness has spoken of an objection. I want to know what he referred to. You said Davis told you it was on account of some objection to the inventory. I want to know what that objection was as used by you.

A. Well, the objection, I believe, to the inventory was put in writing.

Q. Do you not know what objection he meant from the conversations between you?

A. No; I do not know anything about the objections after I quit. There was an objection, I think, put into the inventory before I handed the papers to him.

Q. Now, Senator, when you appeared in the orphans' court before the register there was some discussion—not before the register, but before the supreme court judge, sitting as judge of the orphans' court, Judge Cox—there was some discussion between you and Upton and Mr. Phillips and the court about this bond, was there not? The amount of the bond?

A. There was something said. I do not know what it was.

Q. The bond was fixed that day, was it not?

A. It was.

Q. I will ask you if this affidavit of Mrs. Glover's was not read to the court by Phillips. I will ask you, Senator, before you answer that question, whether you did not present that day the amended petition for probate.

598 A. I think that was among the papers presented. All the papers, whatever they were, were brought before the court at that time.

Q. Now, pending the discussion as to the amount of the bond, was not that paper read in resistance to your views of the case?

A. (After examining.) I think that paper was read to the court. I think it was insisted on that day that the personal property amounted to that stated in that petition.

Q. Now, I call your attention to one phrase of this paper as follows: First, stating to the best information and belief of the affiant the estate left by Anastasia Patten was worth $456,022.99, the affidavit adds, "whilst upon an hypothesis which has occurred to this affiant that inadvertently the items given in the petition may not comprise the whole of such estate, it amounts to $501,242.99."

I will ask you, Senator, if there was not mentioned at the time, and so understood by you, that this affidavit then and there raised the question about this $45,000 worth of notes, that being the total you gave in your amended petition for probate and the total she gives in the affidavit.

A. Well, yes; this affidavit——

Q. Touch upon that point.

A. Those notes would have to be included in the amount to make up this affidavit.

599 Mr. Davis admits the signature to the application of Augusta P. Glover for an order for the payment of the legacies now on file and part of the court records as the genuine signature of Augusta P. Glover and was filed on the date indicated by the official stamp of the clerk, but Mr. Davis expressly saves all exceptions as to the admissibility of the paper.

Redirect examination.

By Mr. DAVIS:

Q. Senator, at the time the box was examined at the safe-deposit company's, do you remember whether or not there was any insurance policy found in the box?

A. I do not recollect any. I should recollect it if there had been any there.

Q. Referring to what you have said as to conversations with me since I came to represent the Misses Patten in this matter, do you wish to be understood as saying that at any time you and I have consulted or advised together with relation to the conduct of this case?

A. No; I left it entirely to you.

Q. You have spoken of these conversations, and you say that they had reference to the legacies?

A. Yes.

Q. Do you recollect that in those conversations I stated to
600 you that Mr. Glover, representing Mrs. Glover, and I, representing the Misses Patten, were engaged in a partial adjustment of these matters, and that probably the payment of the legacies would be brought about in that way?

A. I recollect that.

Q. You first spoke to me about having received some communication from the West?

A. I spoke to you about it. I promised them I would do so and I did.

Q. And I spoke to you in reply in that connection?

A. Yes.

Q. Now, with reference to the law of Nevada, about which you have been asked, as I understand you, upon the death intestate of a man leaving a wife and children under the circumstances under which Mr. Patten died, his widow becomes vested with one-half of the estate and the children of the other?

A. Yes.

Q. Suppose those children are under age, what is the law of Nevada as to the necessity for a guardian? It appears that Mrs. Patten was the guardian of these children.

A. There is a guardian appointed. The mother has the preference.

601 Recross-examination.

By Mr. GLOVER:

Q. Senator, there is another question growing out of that. Is it not true that the estate which de-cends or which is inherited one-half by the wife and the other half by the children is what is known as community property, and that community property amounts to the earnings of both parties during marriage, and that in addition to that there is recognized by the law a separate estate in the husband and a separate estate in the wife, if such exists?

A. Yes; but this was all community property.

Q. Do you know that to be a fact?

A. Oh, yes; Mr. Patten acquired this property in Nevada. He was a young man when he came there; he was in California, but acquired very little property there before he came over. He was in the legislature of California and came over to Nevada with very little property; he made it in the mines.

Q. Now, Senator, let me ask you, do you undertake to say positively——

The WITNESS: That is my recollection.

Q. I ask you a question of law and I *you* give you a question of fact.

A. I did not intend to volunteer any testimony.

Q. I understand. Your answer was material, but it was not exactly asked for. What I want to know is whether the
602 law does not recognize a separate estate in each spouse being defined as property, not described as property acquired by both during coverture?

A. This is the law of Nevada, as well as I can recollect it. The property which either has on marriage is separate property and what is subsequently acquired by gift or bequest or inheritance is also separate property; what is acquired by them during coverture is common property, and all of the property that comes to either from any other source than their own effort, before or after marriage, is separate property.

Q. Now, how does that descend as separate property? Does it not descend on the children of either spouse?

A. The separate property descends, I think, to the living spouse and the children of the marriage. I am not absolutely certain as to the proportions; there is some distinction as to the number of children, I think, but I could not state with accuracy without looking it up, but the property descends to the surviving husband or wife and the children of the marriage.

Q. In some proportion that you do not define?

A. I think the proportions are varied by the number of children.

I think there was a qualification—there was an amendment to that effect—but whether it is now in force I do not know.

Q. Now, Senator, I will ask is there not always some difference in marshaling the assets, in paying debts growing out of the separate property—the separate property and community property?

603

Mr. DAVIS: May I ask right here whether this whole subject is not provided for and controlled by statute law of the States of California and Nevada?

The WITNESS: Absolutely; all in detail.

Mr. DAVIS: Then, Mr. Glover, I beg to suggest that the simple way would be to dispense with this examination.

Mr. GLOVER: Suppose that you and I agree that the statutes may be read on that subject as showing the law?

Mr. DAVIS: Exactly.

Q. Now, Senator, you do mean to say of your own knowledge that when Edmund Patten married he had nothing?

A. No; I do not.

Q. I have been told that he had an estate of some size, although the bulk of his fortune was made afterwards. Was he not worth $50,000, at least, at that time?

A. When he married? I would not say that he was not.

Q. You do not undertake to say positively?

A. No; not positively, but he made his money in Nevada; he went over there a young man.

Q. Then you must qualify your statement that it was all community property—there may have been some other property—and do you mean to say that Mrs. Patten had no property at all when she was married?

604

A. I do not. Of course, I would not know the bottom details. I knew them as friends and neighbors.

Q. Very often mistaken about it?

A. Very often.

WM. M. STEWART.

Subscribed and sworn to before me this 28 day of May, A. D. 1891.

ALEXANDER H. GALT, *Examiner.*

Mr. DAVIS: It is admitted by the counsel for the respective parties that the first appearance of Mr. Davis in behalf of the present complainants was in the orphans' court on the 4th of February, 1889.

Mr. GLOVER: I want to add that nothing is admitted as to the time when Mr. Davis was employed as attorney for the young ladies, as it might have been some time after his employment that he made his first appearance in court.

Mr. Davis, in behalf of the complainants, now offers in evidence the collector's inventory and the inventory of the executrices as filed in the office of the register of wills in the matter of the estate of Anastasia Patten, No. 3234.

Mr. GLOVER: I object to it as incompetent, irrelevant, and immaterial.

605 Mr. Davis also offers in evidence in behalf of the complainants the original petition of the complainants of the 10th day of May, 1889, for the passage of their claims and the original record and papers relating thereto, being the order of the court on the said petition of the 10th day of May, 1889, the answer of the defendant Augusta Patten Glover of the 27th day of May, 1889, and the order of the court of the 13th day of June, 1889.

Mr. GLOVER: I object to them on the ground that the allegation of the pendency of these proceedings in nowise aids the jurisdiction of the court of equity; that their averment in the bill is surplussage and immaterial; that the jurisdiction of the court, if any, depends upon the status of the complainants as creditors, heirs-at-law and next of kin, and their right as such to bring an action to construe the will. I also object to them as irrelevant and immaterial. This objection is intended to limit the defendant- to the construction of the pleadings as being a mere action to construe the will; that question is reserved.

Without any waiver of the foregoing objections or any of them, the same and each of them being fully reserved, it is agreed between counsel that at the hearing of this cause the original of the papers mentioned may be produced and read, and that if it should become thereafter necessary transcripts duly certified may be made part of the record for the purposes of appeal or other proper purpose.

606 Subject to the same stipulation as to the use of originals and certified copies, Mr. Davis further offers in evidence in behalf of the complainants the record, meaning thereby all original papers, orders of court, and other proceedings, in cause No. 11742, in equity, on the dockets of the supreme court of the District of Columbia, the same being the proceedings hereinbefore referred to as the proceedings for discovery.

Mr. GLOVER: It is agreed that the originals of the documents covered by the offer may be offered in evidence at the hearing, and that certified copies thereof in lieu of the originals may be made part of the record on appeal, but the documents themselves are objected to as irrelevant and immaterial and as being inadmissible for the purpose of fortifying the memory of the witness Beall, who testifies that if certain things were said in his answer in that case, then those things were true. They are further objected to on the ground that they are irrelevant, immaterial, and incompetent for any purpose. Moreover, they are objected to on the ground that the affidavits are answers in the way of verified answers of the complainants in this case filed in that cause and cannot by this process be made evidence for them, as they amount to simply their declarations.

Counsel for the complainants here announced the close of the complainants' case in chief.

607 Mr. GLOVER: I want to offer in evidence on the part of the defendants the original and amended petitions for probate and the application of Augusta P. Glover, filed May 24th, 1890, as appears by the official stamp, "Dorsey Claggett, register of wills," in case No. 3234 for an order on the complainants to pay the legacies named in the will, and in connection therewith the answer thereto made by the complainants, their signatures to which were identified by the witness Stewart and admitted by Mr. Davis.

Mr. DAVIS: Counsel for the complainants objects to the introduction of the two last-named papers, namely, the application of Augusta P. Glover and the answer thereto of the complainants, and to each of them upon the ground that the said papers are and each of them is wholly irrelevant, immaterial, incompetent, and inadmissible on any ground, but it is agreed between counsel that the originals of the said papers may be offered at the hearing, the same stipulation as heretofore with relation to certified copies, the foregoing objections and each of them, however, being distinctly reserved.

Adjourned to meet pursuant to notice.

608 DISTRICT OF COLUMBIA, *ss:*

I, Alexander H. Galt, examiner in chancery, do hereby certify that in pursuance of notice the foregoing depositions were taken down by me in the presence of and from the statement of witnesses at the time and place designated in the caption hereof and were reduced to writing and by me read over to the witnesses and by them subscribed in my presence, the witnesses being by me duly sworn to testify the truth, the whole truth, and nothing but the truth touching the matters at issue in said cause.

I further certify that I am not of counsel for any of the parties in said cause or in any manner interested therein.

ALEXANDER H. GALT,
Examiner in Chancery.

609 Law office of W. E. F. Deal.

VIRGINIA CITY, NEVADA, *June* 10, 1885.

MY DEAR MR. HILLYER: I have sent the accounts to Mrs. Patten so far as I was able to make them out. There are several items of which I know nothing definitely, as they were either settled by Mrs. Patten or the amount was received in a check or draft & sent by me to her.

It seems to me there is but one safe way to settle the estates of the daughters, and that is by filing the accounts in court here and have them settled and make distribution by decree of the court.

Whatever settlement might be made out of court might at some time be the subject of dispute. In case of marriage of any of the daughters the husbands might at some time through their influence make trouble.

The sureties on the bonds of Mrs. Patten as guardian might also insist for their protection on having the estate settled in court.

The money distributed in San Francisco was invested in U. S. bonds, and the interest paid should be added.

There was an allowance of $500 per month made by the probate court in San Francisco during the administration & paid. This allowance is charged in the final account in San Francisco and amounted to $5,000. This was for the support of the family for 10 months.

610 The distribution made in San Francisco was of the balance after paying all expenses.

If the items are supplied that I have omitted, I could make out the account. Mrs. Patten is entitled to credit for all expenses since Nov. 16, 1873. She is also entitled to credit for her commissions both on the amount of estate as administratrix and on amount to be distributed as guardian.

Mrs. Patten could settle with her daughters upon a full accounting to them and taking from each as they become of age a receipt and release. This might save the expense at the time, but, as you know, there would be the danger of endless disputes and of ruinous litigation.

I think by all means the settlement should be made by the court. If that course is pursued, there never can be any trouble. Four of the daughters are now of legal age. They can employ their own attorney, and I would advise Mrs. Patten to insist on it. The youngest could have an attorney appointed by the court.

It has taken me some time to look up the books and papers, and fortunately they were saved from the fire. The court papers were all destroyed by the fire of 1875.

If the course is pursued I have advised and the amounts I have omitted are sent me, with the expenses of educating & maintaining the daughters, I can add the legal charges and percentage and make the account out in proper form and wind up the estate.

Yours truly, W. E. F. DEAL.

611 (Endorsed:) Eq. 12234. Comp'ts' Exhibit No. 1. A. H. Galt, ex'r.

612 C. J. Hillyer. J. H. Ralston.

Hillyer & Ralston, attorneys at-law, 1326 F street N. W.

WASHINGTON, D. C., *Sept. 8th*, 1885.

MY DEAR MRS. PATTEN: On thinking further of the matter I have concluded not to write to Mr. Deal at present, at least not until I have seen you again. My reason is that I do not think it prudent or best to take any steps in a court proceeding until a full settlement with the girls, at least the three older ones, has been arranged and agreed upon. In the absence of vouchers for your expenditures on behalf of the children the court will require affidavits & proof upon this point, & you will at once appreciate the difficulty of furnishing such proofs as will be satisfactory. If an agreement is made & put in proper forms, this, as to those of the girls who are of legal age,

will be a sufficient basis for making a binding decree, which will be valid without further proofs.

I think you had better come down before long and with me make the necessary calculations & determine what you think is justly owing to each of the girls, then talk the matter over with them, & when it is agreed upon have the proper receipts prepared & payments made. We can then see about having the necessary court orders made in Nevada.

613 This is the course which, on reflection, commends itself to my judgment. If it seems to you the proper course I shall be glad to see you & attend to it at any time convenient to you.

As I am going to Woodmont for a few days the latter part of this week, perhaps you had better telegraph to Mrs. Hillyer before coming down on this business above, & she can tell you if I am out of town.

Very truly yours, C. J. HILLYER.

(Endorsed:) C. J. H. Letter 9, 8, '85. Complain's Exhibit No. 3. A. H. Galt, ex'r.

614 Whereas our mother Anastasia Patten as guardian for us received in 1873–'4–'5 certain amounts of money being our portion by inheritance of the estate of our deceased father and whereas no special separate investments of the money so received have been made by our said guardian but the same has been by her kept and safely invested in connection with moneys belonging to her in her own right derived from the same estate—and whereas our said guardian has up to the present date had entire charge of our maintenance and education and has during the past thirteen years incurred a large amount of family expenses for our benefit of which expenses no account has been kept by her;

And whereas we and our said guardian are now desirous of settling the account between us in a just and equitable manner, without attempting to secure technical accuracy in such settlement;

And whereas our said mother & guardian has submitted to us for inspection all accounts & papers in her possession touching or relating to the receipts or disbursements entering into such accounting and we have personally general knowledge concerning the family expenses during said period,

And whereas from such examination & knowledge we believe that by a payment to each of us by our said guardian of the sum of $101,600 an equitable settlement will be made & full justice done to each of us,

Now, therefore, each of us for herself agrees to accept the said sum of $101,600 in full & complete settlement of all accounts
615 claims & demands between us & each of us and our said mother & guardian and in full satisfaction of all claims & demands of whatever character arising out of or connected with the administration of said estate or the said relation of guardian & ward, and each of us for herself authorizes and requests that upon presentation of this agreement & a receipt for the above amount the court having jurisdiction thereof will without further investi-

gation of accounts so far as they concern either of us pass the final accounts of our mother as administratrix & guardian & by proper decree discharge those liable as bondsmen for her action in either capacity.

(Signed) MARY ELLEN PATTEN.
KATHERINE AUGUSTA PATTEN.
JOSEPHINE ANTOINETTE PATTEN.
EDITH PATTEN.

(Endorsed:) Eq. 12234. Complainants' Exhibit No. 5. A. H. Galt, ex'r.

616 Whereas our mother Anastasia Patten as guardian for us received in the years 1873–'4–'5 certain amounts of money being our portion by inheritance of the estate of our deceased father,

And whereas no special separate investments of the money so received have been made by our said guardian but the same has been by her kept and safely invested in connection with moneys belonging to her in her own right derived from the same estate,

And whereas our said guardian has up to the present date had entire charge of our maintenance & education and has during the past thirteen years incurred a large amount of family expenses for our benefit of which expenses no account has been kept by her,

And whereas we and our said guardian are now desirous of settling the account between us in a just and equitable manner without attempting to secure technical accuracy in such settlement,

And whereas our said mother and guardian has submitted to us for inspection all accounts and papers in her possession touching or relating to the receipts and disbursements entering into such accounting and we have personally general knowledge concerning the family expenses during said period,

And whereas from such examination and knowledge we believe that by a payment to each of us by our said guardian of the sum of $101,600 an equitable settlement will be made and full justice done to each of us.

617 Now therefore each of us for herself agrees to accept the said sum of $101,600 in full and complete settlement of all accounts claims & demands between us and each of us and our said mother and guardian and in full satisfaction of all claims and demands of whatever character arising out of or connected with the administration of said estate or the said relation of guardian & ward and each of us for herself authorizes and requests that upon presentation of this agreement and a receipt for the above amount the court having jurisdiction thereof will without further investigation of accounts so far as they concern either of us pass the final accounts of our mother as administratrix and guardian and by proper decree discharge those liable as bondsmen for her action in either capacity.

(Signed) MARY ELLEN PATTEN.
KATHERINE AUGUSTA PATTEN.
JOSEPHINE ANTOINETTE PATTEN.
EDITH PATTEN.

Oct. 15, '87.	Mary E. Patten	.....	.....	11,250 00
" " "	Josephine A. Patten	.....	.....	11,250 00
" " "	Edith A. Patten	.....	.....	11,250 00
" " "	Nellie Patten	.....	.....	11,250 00

On or about 21 Feb'y, 1887, Mrs. Glover received $80,000, U. S. 4 % bonds.

(Endorsed:) Eq. 12234. Comp'ts' Exhibit No. 6. A. H. Galt, ex'r. Wm. M. Stewart.

618 1. This indenture, made this fifteenth (15th) day of October, in the year of our Lord, one thousand eight hundred and eighty-seven (1887), by and between John E. Beall, of the city of Washington, District of Columbia, party hereto of the first part; and Benjamin P. Snyder, of the same place, party hereto of the second part:

Whereas the said party of the first part is justly indebted unto Mary Helen Patten, Josephine Antoinette Patten, Edith Agnes Patten and Helen Patten of the said city, in the full sum of forty-five thousand (45,000) dollars, for which amount he has made and delivered to the said Mary Helen Patten, Josephine Antoinette Patten, Edith Agnes Patten and Helen Patten his certain promissory note, of even date with these presents, payable to their order three (3) years after the said date, and has further made and delivered to them his twelve (12) certain promissory notes, all of even date with these presents, and payable respectively to their order in three (3), six (6), nine (9), twelve (12), fifteen (15), eighteen (18), twenty-one (21), twenty-four (24), twenty-seven (27), thirty (30), thirty-three (33), and thirty-six (36) months after said date, each of which notes is for the sum of six hundred and seventy-five (675) dollars, which sum is one quarter's interest at six (6) per centum per annum upon the said indebtedness of forty-five thousand (45,000) dollars, and all of which embrace the interest which will accrue upon the said principal note during the three years of its maturing:

619 And whereas the said party of the first part is desirous of securing the prompt and full payment of each and all of the said notes, both that for the said principal sum as well as those for the quarterly installments of interest to accrue thereon, when and as they shall respectively mature:

Now therefore this indenture witnesseth, that the said party of the first part, in consideration of the premises, and further of the sum of five (5) dollars lawful money of the United States to him in hand paid by the said party of the second part, at and before the ensealing and delivery of these presents, the receipt whereof is hereby acknowledged, hath bargained and sold, transferred, assigned and delivered and doth by these presents bargain and sell, transfer, assign and deliver unto the said party of the second part, his executors, administrators and assigns, three hundred and eighty-six (386) shares of the capital stock of the Washington Brick Machine Company, now standing on the books of the said

company as follows: Three hundred and eleven (311) shares in the name of the said party of the first part, forty (40) shares in the name of Martha Parsons, and thirty-five (35) shares in the name of Mary E. Buckey, and the certificates for which three hundred and eighty-six (386) shares are numbered as follows, to wit: Fifty-nine (59), sixty-one (61) to seventy-four (74) both inclusive, seventy-nine (79), eighty (80), one hundred and twenty (120), one hundred and twenty-six (126), one hundred and twenty-seven (127), one hundred and thirty-six (136) to one hundred and thirty-eight (138) both inclusive, one hundred and forty (140), one hundred and forty-one (141), one hundred and forty-three (143), one hundred and forty-five (145), two hundred and sixty-one to two hundred and sixty-five (261 to 265) both inclusive, two hundred and ninety-four (294), two hundred and ninety-nine (299), three hundred and one (301), and three hundred and two (302), and all the right title and interest of whatsoever nature, whether at law or in equity, of the said party of the first part in and to the said shares of stock:

To have and to hold the said shares of stock described as aforesaid, unto and to the use of the said party of the second part, his executors, administrators and assigns, to his and their sole use, benefit and behoof forever:

In and upon the trusts, nevertheless, hereinafter declared and limited and upon none other, that is to say, in trust to safely keep the said certificates and shares of stock in the vaults of the National Safe Deposit Company of Washington until any one of the events hereinafter provided shall have occurred; and further in trust, in the event that the said promissory notes or any one or more of them shall not be paid at the maturity thereof, to sell the said stock and the certificates thereof at public auction to the highest and best bidder therefor, after giving at least thirty (30) days' notice, by advertisement inserted in the Evening Star newspaper of the said city at least ten (10) times during the said thirty days, which advertisement shall state the time, place, and terms of the said sale, and said terms shall be such as the said party of the second part shall deem most advantageous for the interests of all concerned, and upon full compliance with the terms of sale the said party of the second part shall assign and deliver to the purchaser or purchasers thereof the said shares and certificates of stock; and out of the proceeds of said sale the said party of the second part shall pay first the expenses of the said sale, including a commission of five (5) per centum on the gross proceeds of the said sale as compensation to himself for his diligence and care in the premises, which he shall retain for his own use, and including also and in addition thereto such reasonable counsel fees as he shall have paid or incurred liability for in the administration of this trust, and also such such sums as shall be due to the said The National Safe Deposit Company of Washington for the safe-keeping of the said stock and certificates, and second he shall pay whatever shall then be unpaid of the said notes, whether the same shall then by their terms be due or not; and lastly, after paying in full all of the said

notes as aforesaid, he shall pay over the balance, if any, to the said party of the first part, his executors, administrators and assigns; provided, nevertheless that he shall not be authorized or compellable to proceed to advertise and sell, as is hereinbefore pro-
622 vided for, until he shall have received a written notice, signed by the holders of the said notes or of any one of them that shall be overdue and unpaid, requiring him to so proceed, and specifying the default upon which the said notice is based:

And further in trust in the event that the said party of the second part shall be notified in writing by the said holders of the said notes or of any one or more of the said notes, that the market value of the said stock has depreciated and fallen lower than the sum of one hundred and fifty (150) dollars per share, and the said stock shall have in fact depreciated to that extent and the said party of the first part shall not within five days after notice to him by the said party of the second part of such depreciation either reduce his said total indebtedness by payments on account thereof equal and proportioned to the said depreciations, or deposit with the said party of the second part, upon the same trusts herein declared and limited additional security equal and proportioned in the judgment of the said party of the second part to the amount lost by the said depreciation, then in trust to advertise and sell the said stock and the certificates thereof and to distribute the proceeds of sale, all in the manner hereinbefore provided in the event of a default in the payment of any one or more of the said notes;

And further, in the event that the said principal note for the sum of forty-five thousand (45,000) dollars shall be extended or
623 renewed for the terms of one (1) or two (2) years from the present maturity thereof, which said privilege of renewal has been granted by the said payees of the said notes to the said party of the first part provided that at the time of the said maturity of the said note he shall have paid all of the said twelve (12) interest notes and shall then, at the time of said maturity pay to the said payees at least the sum of fifteen thousand (15,000) dollars on account of and in reduction of the principal of the said note, and provided further that the market value of the said stock shall then be not less than the sum of one hundred and fifty (150) dollars per share, then in trust to hold the said stock and the certificates thereof as security for the said renewed or extended note or notes, and to deal with the same in all respects and in like manner, and upon similar contingencies as are hereinbefore specified and provided with respect to the said original note and notes.

And further in trust, upon the full payment of the said original notes, both principal and interest, and of all and any renewals and extensions thereof, and of all proper costs, counsel fees and expenses of safe deposit incurred by the said party of the second part in the administration of this trust, to reassign and redeliver to the said party of the first part his executors administrators and assigns, the aforesaid stock and the certificates thereof, free and discharged from the provisions and operations hereof.

In testimony whereof the said party of the first part has
624 hereunto set his hand and seal on the day and year first hereinbefore written.

JOHN E. BEALL. [SEAL.]

Witness:
GEORGE W. BAGG.

The words "that he" were interlined after the word less, at the beginning of line ten (10) on page seven (7), prior to the execution and delivery hereof.

Witness:
GEORGE W. BAGG,
Notary Public.

DISTRICT OF COLUMBIA, }
County of Washington, } *ss:*

I, George W. Bagg, a notary public in and for the District aforesaid, do hereby certify that John E. Beall, party to a certain deed hereto annexed and bearing date on the fifteenth (15th) day of October, A. D. 1887, personally appeared before me, in the District aforesaid, he being personally well known to me *to me* to be the person who executed the said deed, and acknowledged the same to be his act and deed.

Given under my hand and my notarial seal this 24th day of October, A. D. 1887.

[SEAL.] GEORGE W. BAGG,
Notary Public.

625 We hereby agree, in consideration of the execution and delivery of the above deed of trust, to grant to John E. Beall the extension or renewal therein provided for upon the contingencies therein provided for, and not otherwise.

MARY ELLEN PATTEN.
JOSEPHINE ANTOINETTE PATTEN.
EDITH AGNES PATTEN.
HELEN PATTEN.

(Endorsed:) No. 7. Eq. 12234. Comp'ts' Exhibit No. 7. A. H. Galt, ex'r.

626 EXHIBIT R. R. P. No. 1.

$45,000.00. WASHINGTON, D. C., *October* 15, 1887.

Three (3) years after date I promise to pay to the order of Mary Helen Patten, Josephine Antoinette Patten, Edith Agnes Patten, and Helen Patten the sum of forty-five thousand dollars, value received.

No. 1. [JOHN E. BEALL,]*
1321 *F St.*

[* Erased in copy.]

[Written across the face:] Paid. H. E. Davis, att'y for Misses Patten. Dec. 12, 1890.

(Endorsed on back:) 4020. John E. Beall. $45,000. 25,000. 15–18 Oct., '90. Jan'y 9, '89, paid on ac. $20.000; Dec. 12, '90, int. paid to date, 237.50; Dec. 12, '90, paid on ac. 5,000; Dec. 12, '90, paid on ac. 20,000. Mary E. Patten, Josephine A. Patten, Edith Patten, Helen Patten.

(In pencil:) Octo., 1890, Mr. John E. Beall made a tender of the payment of the bal. of this note, wh. was conditional upon the surrender of some collateral said to secure this note; wh. tender was refused, it being conditional.

627 EXHIBIT R. R. P. No. 2.

$675.00. WASHINGTON, D. C., *October* 15, 1887.

Three (3) months after date I promise to pay to the order of Mary Helen Patten, Josephine Antoinette Patten, Edith Agnes Patten, and Helen Patten the sum of six hundred and seventy-five dollars, value received, without interest, this note being a note given to pay interest on a note for $45,000.

No. 2. [JOHN E. BEALL,]*
1321 *F St.*

[Written across the face:] Paid by check January 5, 1888.

(Endorsed on back:) No. 8.

628 $675.00. WASHINGTON, D. C., *October* 15, 1887.

Six (6) months after date I promise to pay to the order of Mary Helen Patten, Josephine Antoinette Patten, Edith Agnes Patten, and Helen Patten the sum of six hundred and seventy-five dollars, value received, without interest, this note being a note given to pay interest on a note for $45,000.

No. 3. [JOHN E. BEALL, 1321 *F St.*]*

[Written across the face:] Paid.

(Endorsed on back:) Exhibit R. R. P. No. 3.

629 EXHIBIT R. R. P. No. 4.

$675.00. WASHINGTON, D. C., *October* 15, 1887.

Nine (9) months after date I promise to pay to the order of Mary Helen Patten, Josephine Antoinette Patten, Edith Agnes Patten, and Helen Patten the sum of six hundred and seventy-five dollars, value received, without interest, this note being a note given to pay interest on a note for $45,000.

No. 4. [JOHN E. BEALL,]*
1321 *F St.*

[* Erased in copy.]

[Written across the face :] Paid. Paid by check of July 3, 1888, No. 313, on Riggs & Co. Endorsed to order Anastasia Patten. B. & Y.

630 EXHIBIT R. R. P. No. 5.

$675.00. WASHINGTON, D. C., *October* 15, 1887.

Twelve (12) months after date I promise to pay to the order of Mary Helen Patten, Josephine Antoinette Patten, Edith Agnes Patten, and Helen Patten the sum of six hundred and seventy-five dollars, value received, without interest, this note being a note given to pay interest on a note for $45,000.

No. 5. [JOHN E. BEALL, 1321 *F St.*]*

[Written across the face :] Paid.

631 EXHIBIT R. R. P. No. 6.

$675.00. WASHINGTON, D. C., *October* 15, 1887.

Fifteen (15) months after date I promise to pay to the order of Mary Helen Patten, Josephine Antoinette Patten, Edith Agnes Patten, and Helen Patten the sum of six hundred and seventy-five dollars, value received, without interest, this note being a note given to pay interest on a note for $45,000.

No. 6. [JOHN E. BEALL, 1321 *F St.*]*

[Written across the face :] Paid.

632 EXHIBIT R. R. P. No. 7.

$675.00. WASHINGTON, D. C., *October* 15, 1887.

Eighteen (18) months after date I promise to pay to the order of Mary Helen Patten, Josephine Antoinette Patten, Edith Agnes Patten, and Helen Patten the sum of six hundred and seventy-five dollars, value received, without interest, this note being a note given to pay interest on a note for $45,000.

No. 7. [JOHN E. BEALL, 1321 *F St.*]*

[Written across the face :] Paid.

(Endorsed on back :) 40413. John E. Beall. $375. 15-18 Apl., '89. Paid on ac. $300, as per their letter Jan'y 8, '89; letter attached to original note. Mary E. Patten, Josephine A. Patten, Edith Patten, Helen Patten.

(Stamped :) Paid Apr. 16, 1889. Riggs & Co., bankers, Washington, D. C.

633 EXHIBIT R. R. P. No. 8.

$675.00. WASHINGTON, D. C., *October* 15, 1887.

Twenty-one (21) months after — I promise to pay to the order of Mary Helen Patten, Josephine Antoinette Patten, Edith Agnes

[* Erased in copy.]

Patten, and Helen Patten the sum of six hundred and seventy-five dollars, value received, without interest, this note being a note given to pay interest on a note for $45,000.

No. 8. [JOHN E. BEALL,]*
1321 *F St.*

[Written across the face:] Paid.

(Endorsed on back:) 40414. John E. Beall. $375. 15–18 July, '89. Paid on ac. $300, as per their letter Jan'y 8, '89; letter attached to original note. Mary E. Patten, Josephine A. Patten, Edith Patten, Helen Patten.

(Stamped:) Paid. Paid Jul- 16, 1889. Riggs & Co., bankers, Washington, D. C.

634 EXHIBIT R. R. P. No. 9.

$675.00. WASHINGTON, D. C., *October* 15, 1887.

Twenty-four (24) months after date I promise to pay to the order or Mary Helen Patten, Josephine Antoinette Patten, Edith Agnes Patten, and Helen Patten the sum of six hundred and seventy-five dollars, value received, without interest, this note being a note given to pay interest on a note for $45.000.

No. 9. [JOHN E. BEALL,]*
1321 *F St.*

[Written across the face:] Paid.

(Endorsed on back:) 40415. John E. Beall. $375. 15–18 Oct., '89. Paid on ac. $300, as per their letter Jan'y 8, '89; letter attached to original note. Mary E. Patten, Josephine A. Patten, Edith Patten, Helen Patten.

(Stamped:) Paid Oct. 16, 1889. Riggs & Co., bankers, Washington, D. C.

635 EXHIBIT R. R. P. No. 10.

$675.00. WASHINGTON, D. C., *October* 15, 1887.

Twenty-seven (27) months after date I promise to pay to the order of Mary Helen Patten, Josephine Antoinette Patten, Edith Agnes Patten, and Helen Patten the sum of six hundred and seventy-five dollars, value received, without interest, this note being a note given to pay interest on a note for $45,000.

No. 10. [JOHN E. BEALL, 1321 *F St.*]*

[Written across the face:] Paid.

(Endorsed on back:) 40416. John E. Beall. $375. 15–18 Jan., '90. Paid on ac. $300, as per their letter Jan'y 8, '89; letter attached to original note. Mary E. Patten, Josephine A. Patten, Edith Patten, Helen Patten.

(Stamped:) Paid Jan. 16, 1890. Riggs & Co., bankers, Washington, D. C.

[* Erased in copy.]

636 EXHIBIT R. R. P. No. 11.

$675.00. WASHINGTON, D. C. *October* 15, 1887.

Thirty (30) months after date I promise to pay to the order of Mary Helen Patten, Josephine Antoinette Patten, Edith Agnes Patten, and Helen Patten the sum of six hundred and seventy-five dollars, value received, without interest, this note being a note given to pay interest on a note for $45,000.

No. 11. [JOHN E. BEALL,]*
1321 *F St.*

[Written across the face:] Paid.

(Endorsed on back:) 40417. Jno. E. Beall. $[675]* 375. 15–18 Apl., '90. Paid on ac. $300, as per their letter Jan'y 8, '89; letter attached to original note. Mary E. Patten, Josephine A. Patten, Edith Patten, Helen Patten.

(Stamped:) Paid Apr. 17, 1890. Riggs & Co., bankers, Washington, D. C.

637 EXHIBIT R. R. P. No. 12.

$675.00. WASHINGTON, D. C., *October* 15, 1887.

Thirty-three (33) months after date I promise to pay to the order of Mary Helen Patten, Josephine Antoinette Patten, Edith Agnes Patten, and Helen Patten the sum of six hundred and seventy-five dollars, value received, without interest, this note being a note given to pay interest on a note for $45,000.

No. 12. [JOHN E. BEALL,]*
1321 *F St.*

(Endorsed on back:) 40418. John E. Beall. $[675]* 375. 15–18 July, '90. Paid on ac. note $300, as per their letter Jan'y 8, '89; letter attached to original note. Mary E. Patten, Josephine A. Patten, Edith Patten, Helen Patten.

(Stamped:) Paid Jul- 18, 1890. Riggs & Co., bankers, Washington, D. C.

638 EXHIBIT R. R. P. No. 13.

$675.00. WASHINGTON, D. C., *October* 15, 1887.

Thirty-six (36) months after date I promise to pay to the order of Mary Helen Patten, Josephine Antoinette Patten, Edith Agnes Patten, and Helen Patten the sum of six hundred and seventy-five dollars, value received, without interest, this note being a note given to pay interest on a note for $45,00–.

No. 13. [JOHN E. BEALL,]*
1321 *F St.*

[Written across the face:] Paid.

(Endorsed on back:) 40419. John E. Beall. $[675]* 375. 15–18 Oct., '90. Paid on ac. $300, as per their letter Jan'y 8, '89; letter attached to original note. [Mary E. Patten, Josephine A. Patten, Edith Patten, Helen Patten.]*

[* Erased in copy.]

(Stamped:) Paid Oct. 18, 1890. Riggs & Co., bankers, Washington, D. C.

Eq. 12234. Exhibits R. R. P. 1 to 13, incl. A. H. Galt, ex'r.

639

580,000		3,835
21		5
11 60		20,175
700,000		
90,000	5,000	
10,000		
10,000		
100	house.	
20,000		
80,000		
1,010,000		

(Endorsed:) Exhibit M. E. P. No. 3. A. H. Galt, ex'r. (Eq. 12234.)

640

		101,600
		21
		83,000
700,000	bonds.	
90,000	Bank of Cal.	
9,000	motor bonds.	83
		5
80,000	C. J. H.	415
24,000	R. R.	
100,000	United.	580
14,000	mine.	415
2)1,017,000		165
		22
508,000		330
701,600		330
101,600		3630

122)101600(833
976
400
366
360

(Endorsed:) Exhibit M. E. P. No. 4. A. H. Galt, ex'r.

1888.						
Jan'y	31.	To 1 c'k,	200		30	
Feb'y	16.	" 1 "	244		20	
M'ch	9.	" 1 "	293		50	
"	24.	" 1 "	321		30	
Ap'l	30.	" 1 "	400		8	
May	4.	" 1 "	414		30	
"	5.	" 1 "	416		27	
"	8.	" 1 "	424		10	
"	15.	" 1 "	440		25	
June	2.	" 1 "	470		20	
"	28.	" balance			68	75
		C. S			318	75
1888.						
July	2.	To 2 c'ks,	544		68	
"	5.	" 1 "	2		40	
"	26.	" 1 "	51		2	75
Sept.	15.	" balance,	16, 792		126	75
					237	50

1888.						
Jan'y	5.	By dep.,	527		150	
Ap'l	24.	" "	78		168	75
					318	75
1888.						
June	28.	By balance			68	75
July	3.	" dep.,	148		168	75
					237	50

1888.							1888.						
Feb'y	21.	To 1 c'k,	253	30			Jan'y	6.	By dep.,	527	150		
"	22.	" 1 "	256	30			Ap'l	24.	" "	78	168	75	
M'ch	13.	" 1 "	300	12			July	3.	" "	148	168	75	
"	15.	" 1 "	303	30									
"	30.	" 1 "	331	57	40								
May	4.	" 1 "	414	30									
June.	15.	" 1 "	511	8									
	30.	" 1 "	540	15									
July	2.	" 1 "	544	10									
"	5.	" 4 "	2	145	80								
"	6.	" 1 "	6	47									
"	7.	" 1 "	11	6									
"	9.	" 1 "	14	20	75								
"	28.	" 1 "	55	10									
Sept.	15.	" balance,	16, 792	35	55								
				487	50						487	50	

1888.						
Feb'y	6.	To 1 c'k,	217		60	
"	9.	" 1 "	226		11	
"	20.	" 1 "	250		20	
M'ch	27.	" 1 "	325		20	
Ap'l	16.	" 1 "	373		30	
"	28.	" 2 "	393		28	
"	"	" 1 "	399		18	
May	1.	" 1 "	405		23	
"	4.	" 2 "	413		23	50
"	8.	" 1 "	424		21	65
"	9.	" 1 "	426		4	30
"	15.	" 1 "	440		12	
June	27.	" 1 "	534		14	40
	28.	" balance			32	90
		C. S.			318	75
1888.						
July	5.	To 1 c'k,	2		50	
"	6.	" 5 "	6		82	25
"	7.	" 1 "	11		5	36
"	9.	" 1 "	14		14	50
Sept.	8.	" 1 "	136		50	
					202	11

1888.						
Jan'y	5.	By dep.,	527		150	
Ap'l	24.	" "	78		168	75
					318	75
'88.						
July	3.	By bal. from folio	800		32	90
"	"	" dep.,	148		168	75
Sept.	15.	" balance,	16, 793			46
					202	11

1888.							
Jan'y	16.	To 1 c'k,	169		35		
Feb'y	6.	" 1 "	217		5	32	
"	7.	" 1 "	221		9		
"	20.	" 1 "	250		20		
M'ch	8.	" 1 "	289		20		
"	30.	" 1 "	331		20		
Ap'l	7.	" 1 "	354		40		
"	21.	" 1 "	385		28		
"	25.	" 1 "	391		17	60	
"	26.	" 2 "	393		14	50	
"	30.	" 1 "	400		30		
May	8.	" 1 "	424		12	65	
"	9.	" 1 "	426		25		
"	25.	" 1 "	459		5		
June	15.	" 2 "	511		25		
"	19.	" 1 "	519		4		
"	28.	" balance			7	43	
		C. S			318	50	
1888.							
July	5.	To 1 c'k,	2		39		
"	6.	" 2 "	6		75		
	9.	" 1 "	15		37	05	
Sept.	15.	" bal. ledger, 16,	793		450	13	
					601	18	

'88.							
Jan'y	5.	By dep.,	527		150		
Ap'l	21.	" "			168	50	
					318	50	
1888.							
June	28.	By balance			7	43	
July	3.	" dep.,	148		168	75	
Sept.	11.	By Beall, Brown & Co.,	206		425		
					601	18	

645 (Endorsed:) Eq. 12234. Exhibit W. J. F. No. 1. A. H. Galt, ex'r.

646 Supreme Court of the District of Columbia, Special Term for Orphans' Court Business.

In the Matter of the Estate of ANASTASIA PATTEN, Deceased.

Your petitioners, Mary E. Patten, Josephine A. Patten, Edith Patten, and Helen Patten, four of the executrices of the said estate, respectfully show:

That they are the principal creditors of said estate and that it is necessary to have their claims passed upon by this honorable court before they can be adjusted and paid in due course of administration.

That the indebtedness of the said estate to your petitioners arose out of an estate inherited from their father, which was received, administered upon, and retained by their mother, the said Anastasia Patten, deceased, except as hereinafter stated.

That on the — day of September, 1885, the amount of indebtedness of the said Anastasia Patten, deceased, to her five daughters on account of their father's estate was settled and determined by mutual agreement to the satisfaction of all parties interested; which settlement is in the words and figures following, to wit:

"Whereas, our mother, Anastasia Patten, as guardian for
647 us, received in the years 1873-'4-'5 certain amounts of money, being our portion by inheritance of the estate of our deceased father; and

Whereas, no special investments of the money so received have been made by our said guardian, but the same has been by her kept and safely invested in connection with moneys belonging to her in her own right derived from the said estate; and

Whereas, our said guardian has up to the present date had entire charge of our maintenance and education, and has during the past thirteen years incurred a large amount of family expenses for our benefit, of which expenses no account has been kept by her; and

Whereas, we and our said guardian are desirous of settling the account between us in a just and equitable manner without attempting to secure technical accuracy in such settlement; and

Whereas, our said mother and guardian has submitted to us for inspection all accounts and papers in her possession touching or relating to the receipts and disbursements entering into such accounting, and we have personally general knowledge concerning the family expenses during said period; and

Whereas, from such examination and knowledge we believe that by a payment to each of us by our said guardian of the sum of $101,600 an equitable settlement will be made and full justice done to each of us,

648 Now, therefore, each of us for herself agrees to accept the said sum of $101,600 in full and complete settlement of all accounts, claims and demands between us and each of us and our said mother and guardian, and in full satisfaction of all claims and demands of whatever character arising out of or connected with the administration of said estate, or the said relation of guardian and

ward, and each of us for herself authorizes and requests that upon presentation of this agreement and a receipt for the above amount the court having jurisdiction thereof will, without further investigation of accounts so far as they concern either of us, pass the final accounts of our mother as administratrix and guardian, and by proper decree discharge those liable as bondsmen for her action in either capacity.

(Signed) MARY ELLEN PATTEN.
KATHERINE AUGUSTA PATTEN.
JOSEPHINE ANTOINETTE PATTEN.
EDITH PATTEN."

That on the — day of February, 1887, said Anastasia Patten, deceased, paid on account of the indebtedness set forth in the foregoing instrument to the said Katherine Augusta Patten (now Augusta P. Glover) the sum of — dollars, and on the — day of October, 1887, the said Anastasia Patten, deceased, paid to each of her four said daughters, other than Katherine Augusta Patten (now Augusta P. Glover), the sum of $11,250, aggregating $45,000.

649 That no payments have been made to either of the five daughters of said Anastasia Patten, deceased, mentioned in said agreement of settlement except as above stated, and that the balance of said indebtedness, after deducting such payments, remains due and unpaid to the executrices herein respectively, together with interest thereon at the rate of six per centum per annum from the date of the settlement above set forth. A statement of the indebtedness due to each of these executrices herein to date and also the legacies mentioned in the last will and testament of said Anastasia Patten, deceased, and all other indebtedness known to the undersigned, is hereto attached.

Wherefore your petitioners pray that this honorable court pass upon the several claims of the executrices herein and authorize the payment of the same, and also pass upon any other item of indebtedness described in the statement hereto attached which any of the executrices herein may question on the hearing of this petition.

And your petitioners will ever pray, etc.

(Endorsed:) Exhibit W. M. S. No. 1.

650 Supreme Court of the District of Columbia, Special Term for Orphans' Court Business.

In the Matter of the Estate of ANASTASIA PATTEN, Deceased.

We, the undersigned, executrices of the said deceased, acknowledge having received from Josephine A. Patten, collector, the property described in the inventory of personal estate filed by said collector in the above-entitled court on January 25, 1889, and also the money mentioned in the inventory of money due deceased filed by said collector in the above-entitled court on January 26, 1889, and we hereby accept the said mentioned inventories and consent to be

answerable for the same, and adopt said inventories in the same manner as if the said inventories had been made out after our administering upon said estate.

Dated January —, 1889.

(Endorsed:) Exhibit W. M. S. No. 2.

651 In the Supreme Court of the District of Columbia.

MARY E. PATTEN *et al.*, Complainants,
vs.
AUGUSTA P. GLOVER & HUSBAND, Defendants } Equity. No. 12234.

Be it remembered that at a session for the taking of testimony in the above-entitled cause begun and held on the 30th day of July, 1891, and continued from time to time until the 5th day of September, 1891, when the within proceedings were had, the certain documentary evidence herewith returned was offered on the part and behalf of the defendants in the said cause aforesaid; which said evidence was produced and offered after due notice and in the presence of Henry E. Davis, Esquire, for the complainants, and John M. Glover, Esquire, for the defendants. The sessions referred to were held at the office of Henry E. Davis, Esquire, Fendall building, Washington, D. C.

I hereby certify that I am not of counsel for any of the parties in said cause or in any manner interested therein.

ALEXANDER H. GALT,
Examiner in Chancery.

652 THURSDAY, *July 30th*, 1891.

Met by consent.

Present: Henry E. Davis, Esquire, for the complainants, and John M. Glover, Esquire, for the defendants.

Whereupon the following proceedings were had:

Counsel for the defendants offers in evidence printed abstract of record, filed August 24th, 1889, in the orphans' court, numbered 32 and 34, being the record on the hearing in the general term of the application to exclude the defendant Augusta P. Glover from further administration of the estate.

To the admission of which counsel for the complainants, waiving the objection that the said record is secondary instead of original evidence, objects to the same as irrelevant, inadmissible, immaterial, and incompetent.

Counsel for the defendants also offers in evidence a letter signed Henry E. Davis, dated 16th of April, 1889, being the letter referred to in the printed copy aforesaid in letter of John M. Glover, marked Exhibit A, on page 22, which reads as follows:

"MY DEAR MR. DAVIDGE: In case Mrs. Glover is not in condition to examine and sign the inventory, will you please so advise me? No doubt Mr. Claggett will go to the house if desired. I am desirous of getting the inventory and list of debts filed as soon as possible

in order that the debts and legacies may be got out of the way and everything else adjusted so as to leave only the questions of Mrs. Glover's claim and the partition.

653 Yours truly,

(Signed) HENRY E. DAVIS.

To W. D. Davidge, Esq., city."

To which counsel for the complainants, admitting the genuineness of the letter offered, objects as material, irrelevant, inadmissible, and incompetent.

Counsel for the defendants also offers the decree in the general term in the same cause discharging the rule to show cause and remanding the cause to the orphans' court for further proceedings, filed November 22nd, 1889.

To which counsel for the complainants objects as before.

Counsel for the defendants also offers the opinion of the general term rendered upon entering the decree last mentioned.

To which counsel for the complainants objects as before, agreeing, however, that if the opinion be deemed proper to be read in evidence the same may be read from the published report thereof in Mackey's Report, volume 7, page 294, and following.

Counsel for the defendants also offers the application of Augusta P. Glover for order to pay legacies, filed in the orphans' court May 24th, 1890.

To which counsel for the complainants objects as before.

Counsel for the defendants also offers the answer of the defendants thereto, filed June 9th, 1890.

To which counsel for the complainants objects as before.

654 Also order of court therein, filed June 8th, 1890.

To which counsel for the complainants objects as before.

Counsel for the defendants also offers original petition for probate of will, filed October 3rd, 1888.

To which counsel for the complainants objects as before.

Counsel for the defendants also offers the assent of next of kin, filed October 3rd, 1888.

To which counsel for the complainants objects as before.

Counsel for the defendants also offers in evidence motion for leave to file amended petition for probate, filed October 3rd, 1888.

To which counsel for the complainants objects as before.

Counsel for the defendants also offers amended petition for probate, filed October 10th, 1888.

To which counsel for the complainants objects as before.

Counsel for the defendants also offers the answer of Augusta P. Glover, filed December 21st, 1888.

To which counsel for the complainants objects as before.

Counsel for the defendants also offers renunciation of Josephine and Edith Patten, order admitting will to probate and appointment of Mary E. Patten, Helen Patten, and Augusta P. Glover as executrices, and the appointment of Josephine A. Patten as collector and her letters as collector, which appear in the proceedings of the orphans' court under date of December 28th, 1888.

To each and every of which counsel for the complainants objects on the same grounds as before.

Counsel for the defendants also offers the bond of Josephine A. Patten as collector, under date of December 24th, 1888.

655 To which counsel for the complainants objects as before.

Counsel for the defendants also offers the petition of Josephine and Edith Patten withdrawing their renunciation and the decree of the court modifying the previous order of December 24th and directing letters to issue to the four complainants and the defendant Augusta P. Glover; also the said letters testamentary, which appear in the records of the proceedings of the orphans' court under date of January 14th, 1889.

To which counsel for the complain-ts objects as before.

Counsel for the defendants also offers the original bill of complainant in cause numbered 12234, in the supreme court of the District of Columbia, being the case on trial, filed January 8th, 1890; also all answers and demurrers of the defendants to the said original bill; also the decree sustaining demurrers to the said original bill and the stipulation as to filing an amended bill and making John M. Glover a new party; also the original subpœna to answer, issued upon the original bill of complainant, with the return of the marshal thereon; also the decree of June 18th, 1890, sustaining demurrers in part; also application to examine John E. Beall *de bene esse*, filed December 12th, 1889, in the supreme court of the District of Columbia, in cause numbered 11742, otherwise known as the proceedings for discovery; order allowing the examination of December 12th, 1889; motion and affidavit for vacation of the said order of December 13th, 1889; order vacating the order permitting the examination of December 2nd, 1890.

To which and to every of which counsel for the complainants objects as irrelevant, immaterial, incompetent, and inadmis-

656 sible.

Counsel for the defendants also offers the original deed of trust from Augusta P. Glover and husband to Henry E. Davis *et al.*, trustees, recorded in Liber 1535, fol. 251, of the records of the recorder's office of the District of Columbia.

To which counsel for the complainants objects as before.

It is agreed by counsel for the respective parties that in case any or all of the foregoing papers offered by the counsel for the defendants be deemed admissible the originals thereof may be read at the hearing and certified copies thereof introduced into the record and be made a part of any transcript of record deemed necessary by either party to the cause.

Counsel for the defendants also offers certified copy by F. I. Wildes, county clerk of Storey county, State of Nevada, and *ex officio* clerk of the district court of the said State and county, in the matter of the estate and guardianship of Josephine Patten, minor, of the bond and letters of guardian (Exhibit No. 6).

To which counsel for the complainants objects as before.

The same as to Mary Ellen Patten (Exhibit No. 3).

To which counsel for the complainants objects as before.

The same as to Nellie Patten (Exhibit No. 4).

To which counsel for the complainants objects as before.

The same as to Edith Patten (Exhibit No. 2).

To which counsel for the complainants objects as before.

It is agreed between counsel that, if deemed necessary by counsel for the defendants, more fully authenticated copies of the four papers last offered may be offered in evidence at any time before the
657 hearing of this cause in the supreme court of the District of Columbia in special term, counsel for the complainants saving and reserving the same objections to the introductions of such copies as made to those now offered.

Adjourned to meet on notice.

658 WASHINGTON, D. C., *September* 5, 1891—1.30 o'clock p. m.

Met by consent.

Present: Henry E. Davis, Esq., solicitor for the complainants; John M. Glover, Esq., solicitor for the defendants.

Whereupon Mr. Glover, in behalf of the defendants, offers in evidence subpœna addressed to Augusta P. Glover, endorsed served January 16, 1890—D. M. Ransdell, marshal—in case No. 12234, being case of Patten against Glover, and the same is marked Defendants' Exhibit No. 8.

To the introduction of this paper Mr. Davis objects, for the complainants, on the ground that the same is irrelevant, immaterial, and incompetent.

Mr. Glover also offers in evidence in the same case the subpœna to her codefendant, John M. Glover, and the same is marked by the examiner Defendants' Exhibit No. 9.

Mr. Davis repeats his above objection to the introduction of this paper.

Whereupon it is understood and agreed between counsel that on the hearing of this case the statute and other laws of Nevada may be read in evidence.

Thereupon Mr. Glover, on behalf of the defendants, offers in evidence *in evidence* certified copy of the bond of Anastasia Patten, as administrator of Edmond Patten, in the district court of the first judicial district, Storey county, Nevada (Exhibit No. 1).

659 Mr. Davis repeats the objection above noted to this offer.

Mr. Glover thereupon offers in evidence certified copy of the letters of administration of Anastasia Patten upon the estate of Edmond Patten from the same court (Exhibit No. 5).

Mr. Davis repeats the above objection to this offer.

Mr. Glover thereupon offers in evidence certified copy of the order appointing Anastasia Patten administrator of the said estate out of the same court (Exhibit No. 7).

Mr. Davis here repeats the objection heretofore noted to this offer.

Mr. Glover thereupon, on behalf of the defendants, offers in evidence the original deed of trust from John M. Glover and Augusta P. Glover to William T. Harris and Henry E. Davis, trustees, recorded in Liber 1535, at folio 251 *et seq.*, of the land records of the District of Columbia, dated the 27th day of October, 1890, the under-

standing being that the original record may be read or certified copy produced at the hearing.

To which Mr. Davis repeats the objection heretofore noted.

Mr. Glover thereupon offers in evidence the creditors' bill filed by the complainants in this case against the defendants herein, with reference to the money received by the defendant Augusta P. Glover from her ancestor, Anastasia Patten, which bill is filed in the supreme court of the District of Columbia, being equity cause No. —, upon the same understanding as to producing the original record or certified copy at the hearing.

660 To which offer Mr. Davis repeats his objection heretofore noted.

Thereupon counsel for the defendants exhibits to counsel for the complainants letters from the office of the Register of the Treasury of the United States, accompanied by tabulated statements, purporting to be, first, a statement of the bond account of Anastasia Patten with the Treasurer of the United States from and including the 17th day of August, 1877, down to and including the 25th day of August, 1888, and, second, table showing prices and values of four per centum securities of the United States during the month of February, 1887. Whereupon it is agreed by counsel that the aforesaid tabulated statements may be introduced into evidence without further certification, and the same accordingly are so introduced and marked respectively Defendants' Exhibits Nos. 10 and 11, subject to objection on the part of counsel for the complainants that the same and each of them is irrelevant and immaterial to the issues in this case, and subject also to the right of counsel for the complainants, if he deems advisable, to disprove the correctness of the same by producing similar tabulated statements, duly certified or otherwise.

Whereupon it is agreed between counsel for the complainants and the defendants that all the papers in the shape of certified copies from the probate court of Nevada which have been offered in evidence are to be received subject to all objections for irrelevancy and immateriality, but not subject to the objection that they are

661 not authenticated under the act of Congress, provided duly authenticated copies thereof under the act of Congress are filed in the cause before the hearing.

It is further agreed that counsel for the defendants may produce, if such exists, duly certified copies, under the act of Congress, of the final settlement of Anastasia Patten as administratrix of Edmond Patten and file the same in this cause at any time before the hearing; whereupon the same shall be evidence subject to all objections, as to relevancy and materiality, and subject, further, to the right of the counsel for the complainants, if he deem necessary, to take testimony in answer to or rebuttal of the effect of such copies of settlement.

Whereupon it is announced by counsel for the respective parties that, subject to the reservations heretofore noted, the testimony for both sides is closed.

(Endorsed:) 12234. In the supreme court of the District of Columbia. Patten *et al. v.* Glover & Husband. Testimony in behalf of the defendants. Alexander H. Galt, examiner. Costs of depositions, $10. Paid A. H. G., ex'r. Filed Sep. 30, 1891. R. J. Meigs, clerk.

662 In the Supreme Court, District of Columbia, in General Term.

Orphans' Court. No. 3234.

In the Matter of the Estate of ANASTASIA PATTEN, Deceased.

Abstract of Record.

Filed Aug. 24, 1889.

R. J. MEIGS, *Clerk.*

663 In the Supreme Court, District of Columbia, in General Term.

Orphans' Court. No. 3234.

In the Matter of the Estate of ANASTASIA PATTEN, Deceased.

Abstract of Record.

1888, Sept. 25. Will filed.
1888, Dec. 24. Letters *ad colligendum* issued to Josephine A. Patten.
1889, Jan. 14. Letters testamentary issued to Mary E. Patten, Josephine A. Patten, Edith A. Patten, Helen Patten, and Augusta Patten Glover.
1889, Jan. 25. Collector's inventory returned.
1889, Jan. 26. Collector's account filed.
1889, " 28. Exceptions to collector's account filed by Augusta Patten Glover.
1889, Feb. 6. Motion by Mary E., Josephine A., Edith A., and Helen Patten to strike from files exceptions of Augusta Patten Glover.
1889, Feb. 8. Order for withdrawal of exceptions, &c., and new inventory and appraisement, as follows:

In the Supreme Court of the District of Columbia, Holding a Special Term for Orphans' Court Business.

In the Matter of the Estate of ANASTASIA PATTEN, Deceased. No. 3234.

664 The collector of the above-named estate having filed an inventory and appraisement thereof and exceptions to the same, with a schedule of alleged undervaluations, having been filed on behalf of Augusta P. Glover, one of the legatees and executrices of the said estate, upon the grounds of incompleteness and undervaluation; and a motion to strike out the said exceptions and schedule having been filed on behalf of Mary E. Patten, Josephine

A. Patten, Edith A. Patten, and Helen Patten, the other legatees and executrices of the said estate; and it appearing to the court from the receipts therefor on file that all and singular the personal property mentioned in the said collector's inventory has been delivered to and receipted for by all the said executrices, it is this 8th day of February, A. D. 1889, on the motion of Walter D. Davidge, Esquire, solicitor of the said Augusta P. Glover, and without objection on the part of Henry E. Davis, Esquire, solicitor of the said Mary E., Josephine A., Edith A., and Helen Patten, now present in court, after due notice of said motion, ordered that the said exceptions and schedule and the motion relating thereto, as well as the account stated on the basis of said inventory and appraisement, may be withdrawn from the files of the court, and that a new inventory of all and singular the personal property of the said deceased be made by the executrices of the said estate, and that Matthew W. Galt, Henry Semkin, Alexander Milne, and Wilson H. Houghton be, and they hereby are, appointed appraisers to make a new appraisement on the said new inventory.

W. S. COX, *J.*

665 1889, April 27. Inventory returned by Mary E., Josephine A., Edith A., and Helen Patten, executrices.

1889, May 10. Petition of last-named four executrices for passage of claims, as follows:

In the Supreme Court of the District of Columbia, Holding a Special Term for Orphans' Court Business.

In the Matter of the Estate of ANASTASIA PATTEN, Deceased. No. 3234.

The petition of Mary E. Patten, Josephine A. Patten, Edith Patten, and Hellen Patten respectfully shows:

First. That by due appointment and qualification by this court in that behalf they are, with their sister, Augusta Patten Glover, executrices of the last will and testament of the said Anastasia Patten, their late mother; that on, to wit, the twenty-seventh day of April, A. D. 1889, the petitioners duly returned into this court an inventory of the personal estate of the said deceased, together with the debts due her in the form of promissory notes secured by deeds of trust on real estate in the District of Columbia, the whole aggregating in ammount the sum of five hundred thousand one hundred and forty-eight dollars and eighty-three and a third cents; but the said Augusta P. Glover, although requested so to do by these petitioners, did not unite in returning said inventory at the time it was so returned as aforesaid, nor has she as yet so united, nor has she returned any other or different inventory in the premises.

666 Second. That in her lifetime the said Anastasia Patten was indebted to the petitioners and the said Augusta Patten Glover under the circumstances and in the manner following: As

children of Edmond Patten, late the husband of the said Anastasia Patten, they inherited from their said father an estate, which said estate was received, administered upon, and retained by their said mother, as their guardian, and on, to wit, the — of September, A. D. 1885, the amount of indebtedness of the said Anastasia Patten in the premises on account of the estate aforesaid was adjusted, settled, and determined by mutual agreement of the said Anastasia Patten, on the one part, and on the other the petitioners and the said Augusta Patten Glover (then Katherine Augusta Patten), except the petitioner Helen Patten, who did not unite therein because she was at the time a minor of tender years, which said agreement was duly signed and executed by the petitioners and the said Augusta Patten Glover, except the said Helen Patten, and is in the words and figures following, to wit:

"Whereas our mother, Anastasia Patten, as guardian for us, received in the years 1873–'4–'5 certain amounts of money, being our portion by inheritance of the estate of our deceased father; and

Whereas no special separate investments of the money so received have been made by our said guardian, but the same has been by her kept and safely invested in connection with moneys belonging to her in her own right derived from the said estate; and

667 Whereas our said guardian has up to the present date had entire charge of our maintenance and education, and has during the past thirteen years incurred a large amount of family expenses for our benefit, of which expenses no account has been kept by her; and

Whereas we and our said guardian are now desirous of settling the account between us in a just and equitable manner without attempting to secure technical accuracy in such settlement; and

Whereas our said mother and guardian has submitted to us for inspection all accounts and papers in her possession touching or relating to the receipts and disbursements entering into such accounting, and we have personally general knowledge concerning the family expenses during said period; and

Whereas, from such examination and knowledge, we believe that by a payment to each of us by our said guardian of the sum of $101,600 an equitable settlement will be made and full justice done to each of us:

Now, therefore, each of us for herself agrees to accept the said sum of $101,600 in full and complete settlement of all accounts, claims, and demands between us and each of us and our said mother and guardian, and in full satisfaction of all claims and demands of whatever character arising out of or connected with the administration of said estate or the said relation of guardian and ward, and each of us for herself authorizes and requests that, upon presentation

668 of this agreement and the receipt for the above amount, the court having jurisdiction thereof will, without further investigation of accounts so far as they concern either of us, pass the final accounts of our mother as administratrix and guardian, and

by proper decree discharge those liable as bondsmen for her action in either capacity.

(Signed) MARY ELLEN PATTEN.
KATHERINE AUGUSTA PATTEN.
JOSEPHINE ANTOINETTE PATTEN.
EDITH PATTEN."

That the petitioner, Helen Patten, being fully advised in the premises, now adopts and accepts said agreement and the settlement aforesaid as though she had duly participated in the same at the time of the making thereof; and that by virtue of the premises the said Anastasia Patten became and was indebted to each of the petitioners and the said Augusta Patten Glover, as of the — day of September, 1885, aforesaid, in the full sum of one hundred and one thousand six hundred dollars.

Third. That on, to wit, the 17th day of February, 1887, as of the first day of January, 1887, the said Anastasia Patten, deceased, paid on account of her said indebtedness to the said Augusta Patten Glover (then Katherine Augusta Patten, as aforesaid) the sum of, to wit, one hundred and two thousand eight hundred dollars, by assigning and transferring to her, the said Augusta Patten Glover
669 (then Katherine Augusta Patten), bonds of the United States of the par value of eighty thousand dollars and of the actual value of, to wit, one hundred and two thousand eight hundred dollars, with benefit of the interest thereon since January first, 1887; that afterwards, to wit, on the 15th day of October, 1887, the said Anastasia Patten paid to each of the petitioners, on account of the several indebtednesses to them aforesaid, the sum of eleven thousand and two hundred and fifty dollars, and that, besides the payments hereinbefore mentioned and specified, no other or further sum has been paid or secured to be paid to the petitioners or the said Augusta Patten Glover on account of the said several indebtednesses as aforesaid.

Fourth. That by virtue of the premises the estate of the said Anastasia Patten, deceased, now stands justly indebted to the petitioners and the said Augusta Patten Glover to the extent hereinbefore indicated, that is to say, to the said Augusta Patten Glover in the sum of one hundred and one thousand six hundred dollars as of the — day of September, 1885, subject to credit of one hundred and two thousand eight hundred dollars, as of the first day of January, 1887, and to each of the petitioners in the sum of one hundred and one thousand six hundred dollars subject to a credit of the 15th day of October, 1887, of eleven thousand two hundred and fifty dollars.

Fifth. That, as the petitioners are advised, they may not retain for their said claims against the said Anastasia Patten, de-
670 ceased, hereinbefore set forth, unless the same be passed by this court; to which end they accordingly pray the court to pass upon their said several claims and authorize the payment of

the same, and that to that end all necessary orders may be made, directions given, and proceedings had.

MARY E. PATTEN.
JOSEPHINE A. PATTEN.
EDITH A. PATTEN.
HELEN PATTEN.

HENRY E. DAVIS,
For the Petition.

DISTRICT OF COLUMBIA, *ss:*

Personally appeared before me, register of wills in and for the District aforesaid, the above-named Mary E. Patten, Josephine A. Patten, Edith Patten, and Helen Patten, who, being first duly sworn, depose and say that they know the contents of the foregoing petition by them subscribed; that the matters therein stated of their own knowledge are true and those stated on their information and belief they believe them to be true.

MARY E. PATTEN.
JOSEPHINE A. PATTEN.
EDITH A. PATTEN.
HELEN PATTEN.

Subscribed and sworn to before me this 10th day of May, A. D. 1889.

DORSEY CLAGETT,
Reg. of Wills, D. C.

671 1889, May 10. Order to show cause on above petition issued to Augusta Patten Glover and John M. Glover, her husband.
1889, May 14. Above petition and order returned served.
1889, May 27. Answer of Augusta Patten Glover to petition filed, as follows:

In the Supreme Court of the District of Columbia, Holding an Orphans' Court.

In the Matter of the Estate of ANASTASIA PATTEN, Deceased. No. 3234.

Augusta P. Glover, now showing cause, as required by the order passed on the 17th day of May, 1889, upon the petition of Mary E. Patten, Josephine A. Patten, Edith Patten, and Helen Patten, says:

First. The claims of the petitioners, who are executrixes and claim also to be creditors, are not authenticated in the manner required by law to give jurisdiction to this court and enable it to pass any order in respect of said claims.

Second. The said claims as alleged are several, and the claimants cannot unite in a joint petition.

Third. The said claims of the petitioners, executrixes, and creditors being contested by this respondent this court cannot try title, as there is an adequate remedy in a court of equity.

672 Fourth. The case presented by the petition is one of trust, within the jurisdiction of a court of equity, and whereof this court has no jurisdiction.

Wherefore, upon the foregoing grounds and each of them, this respondent says that the said petition should be dismissed.

And, without waiving the said exceptions to the jurisdiction of this court to proceed further, this respondent further says:

Fifth. She admits that she and the petitioners are children and executrixes as alleged, and that there was returned unto this court by the petitioners, at or about the time alleged, an inventory purporting to be an inventory of the goods and chattels of the deceased and money and stocks belonging to her, and also of certain debts secured by deed of trust, ammounting in the aggregate to the alleged sum. It is true that this respondent was requested by the attorney of the petitioners to unite in the return of the said inventory, and that she did not so unite nor has she since united or filed any other or different inventory. This respondent says that when so requested she was was confined by sickness to her bed, as was fully explained to the said attorney; that the said inventory was sent to her chamber, and that upon the best examination she could give the said inventory she found that the same, so far as it went, was correct, but that it was not a full, true, and perfect inventory as required by law, valuable articles belonging to the deceased being omitted, and especially there was, as she was informed
673 and believed, an omission to return assets of the estate to the value of forty-five thousand dollars, consisting of evidences of debt, which were with the other securities of the deceased in her possession and belonging to her at the time of her death, which evidences of debt thus omitted from the inventory were, as this respondent charges upon information and belief, never given to the petitioners or any of them, and that these evidences of debt are what, on the unfounded assumption that they were so given, is set up in the said petition as a payment to each of the petitioners on account of eleven thousand two hundred and fifty dollars (in all, forty-five thousand dollars) in support of the pretended theory of indebtedness set up in the petition. The respondent says that although she is an executrix under the will of the said Anastasia Patten, and although the said assets were, as aforesaid, in the possession of the decedent at her death and a part of her estate, the complainants and their agent, though often requested, had at the time of the said inventory refused to give this respondent any information as to the nature of the claim or title they alleged to the said property, or when or where the transfer to them, if any, was made, or the particulars thereof, so as to enable this respondent to prepare the said inventory or to allow the said respondent to inspect the papers said to be connected therewith, but concealed the same and the said assets from the said respondent, whereby she was unable to sign the said inventory in the absence of such in-
674 formation; and respondent further says that she *is* advised the said complainants that it would be necessary for her to know, in order to make the said inventory, from them whether they

claimed the said assets by virtue of a gift or payment or otherwise, and the particulars thereof, and that the said respondents, being so advised, refused to make any disclosure touching the same. The respondent is still confined to her chamber, but so soon as sufficiently recovered it is her intention to take such action in respect to the said inventory as in equity and conscience may be proper and her duty as executrix may require.

Sixth. The father of the respondent and the petitioners, Edmund Patten, was a citizen of the State of Nevada, and died in Gold Hill, in said State, in the year 1872, leaving a large estate, some real estate, but the great bulk personal property. By the laws of Nevada, in which State he was domiciled, and of Nevada and California, in which said property was situated, the title to the said estate vested at his death in his widow, the mother of the respondent and petitioners, the said Anastasia Patten, as to one undivided moiety, and in his children, this respondent and the petitioners, in equal parts as to the other undivided moiety, the said Edmund Patten having died intestate. Letters of administration were issued to the said Anastasia Patten upon the estate of her said husband, and she also received letters of guardianship of her said children, all of whom were infants at the decease of their father, and thereby prac-
675 tically became invested with title to and control over both moieties of the said estate, one in her own right and the other as trustee for her said children. The said estate was never divided, nor did the said testatrix ever settle her final account as administratrix or any account, whether annual or final, as guardian, as she is informed and believes. The power over the whole estate which thus vested in her was exercised with the best motives and with rare skill and judgment. At the date of the will it consisted almost entirely of about one million dollars in United States bonds. The original investments were changed and new investments were made from time to time, in which there was no distinction made in respect to the said moities, and under her management, acquiesced in by the said children and expressly agreed to by each of them as they came of age, the estate rapidly increased in value, and that in pursuance of this understanding and agreement that the funds of the different wards should be invested and reinvested in the name of the said Anastasia Patten no one ever called her to account as guardian, although nearly ten years had elapsed since the majority of Mary E. Patten, the eldest child. In September, 1885, it became apparent to the testatrix, either by the suggestion of her bondsman in the State of California upon her bond as guardian of her said wards or otherwise, that steps should be taken to enable her to formally close her accounts as administratrix and guardian, and that for the purpose of enabling her to do so the paper set out in the petition was drawn, and at her request and without any knowledge or means of knowledge of the correctness of its statements and provisions was
676 signed by this respondent and such of the other children as had then attained the age of 21 years. No papers, vouchers, or accounts were submitted and no investigation or examination of any form or kind was made by any of the wards. The said paper,

when drawn and signed, was never delivered to the children or any of them, but was retained by their mother, and at her decease was found among her papers. There was no consideration of any sort moving to the said children or any of them for the execution of the said paper. The amounts agreed by the terms of said paper to be accepted by the said children were never paid, nor was any evidence of indebtment given to the said children or any of them, nor was the said paper signed by their mother, nor was any evidence of indebtedness given by her to the said children or any of them, nor was any money or any part of the said estate representing the sums agreed by the terms of the said paper to be accepted separated from the residue of the said estate or paid to the said children or any of them, nor was any evidence of the relinquishment of the interest in the said estate of the said children or any of them given or requested, nor were the receipts mentioned in the said paper for presentation to the said court having jurisdiction or any of them given or requested by their mother, nor was anything done in execution of the pretended purposes of the said paper (as pretended in said petition) to work the relinquishment and sale by the said children of their interest in the moiety of the said estate held in trust for them, but that after the execution of the
677 said paper the said interest continued exactly as before, and, together with the other moiety, was indiscriminately invested and reinvested for the benefit of the said children and their mother as if the said paper had never been executed, and with such success that the value of the said estate between the execution of the said paper and her death was more than doubled. This respondent therefore denies that the trust existing before the execution of the said paper as to a moiety of the said estate was extinguished by the said paper or intended so to be, or that the interest of the said children in the moiety of the said estate held in trust was converted or intended to be converted into a money demand provable in this court, and she avers that if the said paper be construed as defining in money the value of the interest of the said children in the said estate the said interest continued to be held in trust, and that if the paper could be regarded as an agreement by distributees and wards to give to the testatrix the option to liquidate or purchase their interest in the common property at a specified sum for the protection of her bond in California, as before described, that the said option was never exercised or agreed to be exercised by the said testatrix, and that in any view which can be taken of the said papers the will of the said Anastasia Patten, proved and recorded in this court, and of which this respondent and the petitioners are the executrixes, whereby the testatrix devised, subject to certain bequests of comparatively trifling
678 amount, all her estate, real and personal, as well the interest of the respondent and the petitioners therein held in trust for them as her own interest in the said estate, operated the extinguishment and discharge of any claim on the part of the said devisees, and that said claims ceased to be provable as debts against the said estate, and that the said extinguishment and discharge is

not affected by the fact that your respondent and the petitioners obtaining all the trust property, both their own interest and their mother's, took title to the real-estate part of said property by descent instead of by devise, in consequence of the attestation of the said will by only two witnesses.

This respondent further says that, whatever the legal effect of the said paper, the claims set up by the complainants and each of them in their petition against the estate of their mother were, if they ever existed, by the will proved and recorded in this court and referred to as part hereof, whereby she devised and bequeathed, subject to certain bequests, all her estate to the said children, share and share alike, extinguished and paid.

Seventh. The averments of the third paragraph of the petition are not true. The relation of the said Anastasia Patten and her said children was, as recognized and treated by her to the day of her death, that of trustee and *cestuis que trust.*, and not of debtor
679 and creditors; the alleged indebtments were never recognized or acted upon by her, and no part payments were made by her on account thereof; the pretended part payments to the petitioners have no other foundation, as this respondent is informed and believes, than the claim by the petitioners that evidences of debt amounting to forty-five thousand dollars, the title whereto was in the decedent and which at her death were in her possession, as aforesaid, had been given by her to them; and this respondent denies alike the transfer of the said evidences of debt in the petition styled payments, and that the said transfer was on account of the said alleged indebtments; and, having fully answered, this respondent prays she may be dismissed with costs, &c.

AUGUSTA PATTEN GLOVER.

DISTRICT OF COLUMBIA, *ss:*

I do solemnly swear that I have read the foregoing return to the order to show cause by me subscribed and know the contents thereof, and that the facts therein stated upon my personal knowledge are true and those stated upon information and belief I believe to be true.

AUGUSTA PATTEN GLOVER.

Subscribed and sworn to before me this 27th day of May, A. D. 1889.

[SEAL.] G. M. FAGUE,
Notary Public.

680 1889, June 13.—Order that proceedings on petition await determination of certain questions, as follows:

In the Supreme Court of the District of Columbia, Sitting in Probate.

In the Matter of the Estate of ANASTASIA PATTEN, Deceased.
No. 3234.

The petition of Mary E. Patten, Josephine A. Patten, Edith Patten, and Helen Patten, with the answer thereto of Augusta P. Glover,

in pursuance of the rule to show cause, now came on to be heard and was argued by counsel and considered by the court, and it appearing to the court that the said petition presents a subject-matter within the jurisdiction of the court, but that the claims of the petitioners cannot be determined by this court without the determination of matters whereof this court has not jurisdiction, such as the effect upon the said claims of the will of the testatrix, the payment to respondent on account as alleged and denied, and other matters, it may be: it is therefore ordered, adjudged, and decreed this 13th of June, 1889, that further action upon the said petition be, and the same is hereby, suspended until said other matters, whereof this court has not jurisdiction, shall be first tried and determined in the appropriate tribunal in such manner as counsel may advise.

W. S. COX, *J.*

681 1889, June 28.—Motion of Mary E., Josephine A., Edith A., and Helen Patten that Augusta Patten Glover be excluded from further administration, as follows:

In the Supreme Court of the District of Columbia, Holding a Special Term for Orphans' Court Business.

Io the Matter of the Estate of ANASTASIA PATTEN, Deceased. No. 3234.

Come now Mary E. Patten, Josephine A. Patten, Edith A. Patten, and Helen Patten, executrices of Anastasia Patten, deceased, by their counsel, and move the court to adjudge and order that Augusta Patten Glover, heretofore appointed and qualified as co-executrix of the said executrices, shall not hereafter interfere with the estate of the said deceased or have any power over the personal estate of the said deceased, but that the executrices aforesaid, moving herein, shall henceforth have the whole administration of the said estate, because on the 27th day of April, A. D. 1889, they duly returned an inventory of the said estate and the said Augusta Patten Glover neglected so to do and has not returned any other or different inventory in lieu thereof, and did not within two months after the return of the said inventory assign to the court any reasonable excuse in the premises which it deemed satisfactory.

HENRY E. DAVIS,
For the Motion.

682 1889, June 28.—Order *nisi* on above motion, as follows:

In the Supreme Court of the District of Columbia, Holding a Special Term for Orphans' Court Business.

In the Matter of the Estate of ANASTASIA PATTEN, Deceased. No. 3234.

It appearing to the court that on the 27th day of April, A. D. 1889, Mary E. Patten, Josephine A. Patten, Edith A. Patten, and

Helen Patten, executrices of the above-named decedent, duly returned an inventory of the said decedent's personal estate, and that Augusta Patten Glover, heretofore appointed and qualified as co-executrix of the executrices aforesaid, did not unite in returning said inventory and has not returned any other or different inventory in lieu thereof and did not within two months after the return of the said inventory assign to the court any reasonable excuse which it deemed satisfactory—

It is, this 28th day of June, A. D. 1889, on the motion of the said Mary E. Patten, Josephine A. Patten, Edith A. Patten, and Helen Patten, by their counsel, adjudged and ordered that the said Augusta Patten Glover shall not hereafter interfere with the administration of the estate of the said Anastasia Patten or have any power over the personal estate of the said deceased, but that the said Mary E. Patten, Josephine A. Patten, Edith A. Patten, and Helen Patten shall hereafter have the whole administration of the estate
683 of the said deceased aforesaid, unless, however, cause to the contrary hereof be shown by the said Augusta Patten Glover on or before the 5th day of July next, and provided that a copy hereof be served upon her on or before the 1st day of July next.

W. S. COX, *J.*

1889, July 8.—Answer of Augusta Patten Glover to order *nisi*, as follows:

In the Supreme Court of the District of Columbia, Holding a Special Term for Orphans' Court Business.

In Re the Estate of ANASTASIA PATTEN, Deceased. No. 3234.

And now comes Augusta Patten Glover, one of the executrices of the last will and testament of the said Anastasia Patten, and for answer to the rule granted on the 28th day of June, A. D. 1889, requiring her to assign to the court any reasonable excuse which she may have why she did not unite in returning the inventory heretofore filed by her co-executrices in the matter of said estate within two months after the return of said inventory, and shows as follows:

1. That on the — day of May, A. D. 1889, in a paper filed and made of record in this honorable court, she adopted and as-
684 sented to the inventory made by the complainants, charging herself with the assets therein contained as fully as do the complainants, with a necessary reservation as to omitted assets, and that she was advised by counsel learned in the law that such was the effect of the said paper, and that it was a sufficient adoption of said inventory as aforesaid; and she further says that at the same time and in the same manner she tendered to this honorable court her excuse for not joining in the said inventory otherwise or herself making a different one, in that she had been too ill to attend thereto, etc.

2. That during the months (two) elapsing between the 27th day of April, 1889, and the 27th day of June, 1889, she has been ill and confined to her chamber until the last few days. She has only left her house two or three times, and, as appears by the certificate of her physician, hereto annexed, she has not been physically able to endure the fatigue of verifying and adding to the inventory of a great number of articles in all the stories and chambers of an immense establishment like the house of her mother, her child having been born on the 20th day of April.

3. That on the — day of ——, A. D. 188–, the said Josephine A. Patten was duly appointed by this court collector of said estate, as will more fully appear by reference to the proceedings in that behalf; that pursuant to such appointment the said Josephine took possession of all the books, papers, evidences of indebtedness,
685 checks, etc., belonging to said estate, as well as of all the other personal property to said estate belonging; that subsequently the said inventory signed by the said co-executrices other than this respondent was filed, to which, so far as it contained a statement of assets of said estate, this respondent has never objected, but, as hereinbefore mentioned, to the extent that it purports to be an inventory of the assets of said estate she has assented thereto, but she did not sign the same for the reason that the same was not, as she believed and as she now asserts, a full, true, and complete inventory of the said estate.

4. That from the time of the appointment of the said Josephine as collector as aforesaid this respondent has not had in her possession any of the assets of said estate, nor has she had any access whatever to any of the books, papers, evidences of indebtedness, or other personal property belonging to said estate; that she has sought for information in regard to the matters hereinafter mentioned from the said co-executrices other than this respondent in respect of assets belonging to said estate not embraced in said inventory which would enable her to return a full inventory, but has been denied such information by her co-executrices.

5. That there were belonging to said estate articles, such as valuable laces, India and cashmere shawls, and other articles, amounting in value in the aggregate, as she believes, to several thousands of dollars, which are not embraced in the said inventory, and which articles are in the possession of her co-executrices other than
686 this respondent and not in the possession of this respondent and have not been in her possession, were not in her possession at the time of said inventory, nor have they since been in her possession, nor has she any access thereto so as to enable her to make a detailed inventory of the said articles.

6. That in addition to the articles hereinbefore referred to and others of similar character belonging to said estate there was or were, as she is informed and believes, a note or notes amounting in the aggregate to $45,000.00 and a certain deed or deeds of trust pertaining thereto and by which the said note or notes was or were secured; that the said note or notes came into the possession of the said Josephine as collector; that the said note or notes have not

been embraced in said inventory; that she has, through her husband and counsel, endeavored in all proper ways to ascertain the facts in respect of the assets herein particularly referred to.

7. That about the time that the said inventory was returned by her co-executrices a demand was made upon her to sign the same. On the 16th day of April, 1889, she caused to be written to the counsel for her co-executrices, in respect of the assets above alluded to, a letter, copy of which letter is hereto annexed, made a part hereof, and marked "Exhibit A."

And in reply thereto a letter was received, copy of which is hereto annexed, made a part hereof, and marked "Exhibit B."

687 Respondent says that the only information which had been furnished to her up to the time the said letter was received has been fully rehearsed herein.

8. That, failing otherwise to obtain the information necessary to enable her to make a proper inventory in respect of the matter above alluded to, she caused to be filed in the supreme court of the District of Columbia, sitting in equity, a bill of discovery against John E. Beall for the purpose of procuring the necessary information in respect of the matters aforesaid; that the said Beall is, as she is informed and believes, in some way connected with the said indebtedness and has executed papers in relation thereto, and, as she is informed and believes, has full knowledge of all the facts connected with the said indebtedness and the manner in which the same is secured; that the said Beall, instead of coming forward at the earliest opportunity and making full and fair disclosure of the facts within his knowledge, to which she would seem to have been entitled without legal proceedings, has placed himself in the hands of the said Davis, counsel for complainants, and through him endeavored to avoid disclosure upon technical grounds.

She further avers that the said John E. Beall was the confidential real-estate agent of the decedent during her lifetime; that many of her investments were made through the said Beall as her agent; that he, the said Beall, had full knowledge of her real-estate

688 investments and transactions and of the securities that she held on account of her investments; that soon after the death of the decedent respondent, through her husband, called upon the said Beall for information as to such investments and as to the securities held by the said decedent on account thereof; that the said Beall refused to give her a list of such investments or securities or to make any disclosure touching the same, and gave as a reason therefor that the said complainants, co-executrices, had directed him not to do so.

And because of said concealments and because of the failure of said Beall to disclose the facts within his knowledge and the resort to a demurrer to defeat or delay the acquisition of such knowledge as this respondent feels that she is entitled to have, she is advised by counsel that it is her duty not to assent to said inventory as a full, true, and complete inventory of said estate until she is fully advised as to all the facts in relation to the said indebtedness.

9. And further showing cause in this behalf, respondent says that

she believes the truth to be that there are in existence and were at the time said inventory was made certain notes, of which a particular description cannot be given owing to the concealments aforesaid, which then belonged and now belong to the said estate, amounting to the sum of $45,000.00 or thereabouts, and secured by a deed or deeds of trust, and she cannot subscribe to an inventory as a full, true, and complete inventory of said estate until she can
689 ascertain the facts in respect of the said indebtedness.

And she further says, as she has hereinbefore stated and as she in substance stated in the pleading by her filed in this court in answer to the petition of her co-executrices to have certain claims allowed, and to which pleading reference is hereby made, she adopts and approves and makes her own the said inventory in so far as it states assets belonging to the said estate.

That her failure to file any other or additional inventory has been and now is because of her sickness, as hereinbefore set forth, together with the acts of concealment hereinbefore averred, and she avers her readiness and willingness and states it to be her purpose to file a complete inventory of said estate as soon as the facts in relation to the matters in objection to said inventory filed by her co-executrices referred to can be ascertained by her, and that she intends diligently to seek the information necessary to enable her to file such inventory.

She therefore prays:

1. That the rule against her may be discharged, and that her said co-executrices be required to make full and detailed showing in regard to the matters and things hereinbefore referred to, and that the said note or notes, deed or deeds of trust, may be brought into court for the inspection of this respondent.

2. That an order be made authorizing testimony to be
690 taken before an examiner to be appointed by the court touching the existence, character, custody, and ownership of the said note or notes, deed or deeds of trust, at the death of Mrs. Patten and their subsequent history up to the present time and the disposition of their proceeds if they have been converted into money, and that after the said examination and discovery and the taking of the said evidence the respondent be allowed time such as the court may deem reasonable to file an inventory, including the said assets, if they should appear to be such and she should be then so advised.

AUGUSTA PATTEN GLOVER.

COUNTY OF WASHINGTON, *District of Columbia*, } *ss*:

Before me, G. M. Fague, a notary public in and for the county and District aforesaid, personally appeared Augusta Patten Glover and on solemn oath says that she is the respondent named in the foregoing answer; that she has heard the same read and is acquainted with the contents thereof; that the matters and things set forth in said answer as upon information and belief she believes to

be true, and that all the other matters and things therein set forth are true in substance and in fact.

AUGUSTA PATTEN GLOVER.

691 Sworn to and subscribed before me this 2nd day of July, A. D. 1889.

[SEAL.] G. M. FAGUE,
Notary Public.

EXHIBIT A.

WASHINGTON, D. C., *April* 16, 1889.

Henry G. Davis.

MY DEAR SIR: Referring to your letter to Mr. Davidge of April 16, I am directed by Mrs. Glover to say that she has as yet no sufficient information to enable her to say that the indebtedness with which the deed of trust in the hands of Mr. Snyder is connected should not be inventoried as assets of the estate. It is in your power to furnish this information. Referring me to a deed of trust which you advise me in the same breath is not recorded or showing Mr. Washington a nondescript paper which you refuse to let him copy is not furnishing such information as the occasion requires.

Mrs. Glover directs me to ask that the original deed of trust in the hands of Mr. Snyder be submitted to the inspection of Mr. Davidge, with liberty to make a copy, and that if the young ladies claim the property as a gift from Mrs. Patten that they personally advise her of that fact and of the time and circumstances thereof.

692 Until proper information is furnished her upon this point you can see at once that she cannot sign any inventory which either includes or omits this property.

Yours very truly, JOHN M. GLOVER.

I hereby certify that Mrs. Glover was confined on April 20th, and that from that time until the present she has not been able to undertake any task involving unusual fatigue or physical exertion. During this period she has been under more or less constant medical treatment.

June 29, '89.

W. W. JOHNSTON, M. D.

1889, August 13.—Order that motion to exclude Augusta Patten Glover from administration be heard at a general term in the first instance, as follows:

In the Supreme Court of the District of Columbia, Holding a Special Term for Orphans' Court Business.

In the Matter of the Estate of ANASTASIA PATTEN, Deceased. No. 3234.

The court having, on the 28th day of June, A. D. 1889, on motion of Mary E. Patten, Josephine A. Patten, Edith A. Patten, and Helen

Patten, executrices of the last will and testament of the said
693 deceased, adjudged and ordered that Augusta Patten Glover should not thereafter interfere with the administration of the estate of the said deceased or have any power over the personal estate of the said deceased, but that the said Mary E. Patten, Josephine A. Patten, Edith A. Patten, and Helen Patten should thereafter have the whole administration of the said estate, unless cause to the contrary should be shown by the said Augusta Patten Glover, and the said Augusta Patten Glover having, on the 8th day of July, A. D. 1889, filed an answer to the said adjudication and order purporting to show cause as aforesaid, and the said motion, adjudication, order, and answer being now under consideration by the court, it is, this 13th day of August, A. D. 1889, by the court ordered that the same be heard by the court at a general term in the first instance.

W. S. COX, *J.*

694 *Bond of Administratrix.*

Estate of EDMOND PATTEN, Deceased.

Know all men by these presents that I, Anastasia Patten, as principal, am held and firmly bound unto the State of Nevada in the sum of fifty-six thousand dollars, U. S. gold coin, lawful money of the United States of America, in which sum I am also jointly bound with each of my sureties hereinafter named, respectively, to the amount with each one of them not exceeding the amount of his liability herein and so as not to exceed in all such joint liability on my part the said sum of fifty-six thousand dollars, U. S. gold coin, to be paid to the said State of Nevada; for which payment well and truly to be made, I bind myself, my and each of my heirs, executors, and administrators, firmly by these presents.

And we, J. P. Jones, Thos. G. Taylor, James Kelly, P. J. Kennedy, and D. Driscoll, as said sureties, are severally held and firmly bound and jointly with said Anastasia Patten are held and firmly bound unto the said State of Nevada in the following sums respectively, to wit: I, the said J. P. Jones, in the sum of fifty-six thousand (56,000.00) dollars in U. S. gold coin; I, the said Thos. G. Taylor, in the sum of twenty-five dollars, U. S. gold coin; I, the said James Kelly in the sum of ten thousand dollars ($10,000), U. S. gold coin; I, the said P. J. Kennedy, in the sum of eleven thousand dollars, U. S. gold coin; I, the said D. Driscoll, in the sum of ten
695 thousand dollars ($10,000), U. S. gold coin, lawful money of the United States of America, to be paid to the said State of Nevada; for the payment of which sums, well and truly to be made, *me* and each of us respectively bind ourselves, our and each of our heirs, executors, and administrators, jointly and severally, as aforesaid, firmly by these presents.

Sealed with our seals and dated this 28th day of January, A. D. 1873.

The condition of the above obligation is such that whereas, by an order of the district court of the first judicial district of the State of

Nevada in and for the county of Storey, duly made and entered on the 10th day of December, A. D. 1872, the above-bounden Anastasia Patten was appointed administratrix of the — Edmond Patten, deceased, and letters of administration were on the 28th day of January, A. D. 1873, directed to be issued to her upon her executing a bond, according to law, in said sum of fifty-six thousand dollars, U. S. gold coin: Now, therefore, if the said Anastasia Patten, as such administratrix, shall faithfully execute the duties of the trust according to law, then this obligation to be void; otherwise to remain in full force and effect.

ANASTASIA PATTEN. [SEAL.]
THOS. G. TAYLOR. [SEAL.]
JOHN P. JONES. [SEAL.]
JAMES KELLY. [SEAL.]
P. J. KENNEDY. [SEAL.]
D. DRISCOLL. [SEAL.]

Signed, sealed, and delivered in the presence of—
W. G. THOMPSON.

The words "gold coin of the United States" interlined before the execution hereof.
Witness:
W. E. F. DEAL.

696 STATE OF NEVADA, } ss:
County of Storey, }

Thos. G. Taylor, one of the sureties above named, being duly sworn, says that he is a householder, resident within the State of Nevada, and that he is worth the sum of twenty-five thousand dollars over and above his debts and liabilities, exclusive of property exempt from execution.

THOMAS G. TAYLOR.

Subscribed and sworn to before me this 30th day of January, A. D. 1873.

W. G. THOMPSON,
Clerk of the First Judicial District, Storey County, Nevada.

STATE OF NEVADA, } ss:
County of Storey, }

J. P. Jones, one of the sureties above named, being duly sworn, says that he is a householder, resident within the State of Nevada, and that he is worth the sum of fifty-six thousand dollars over and above his debts and liabilities, exclusive of property exempt from execution.

J. P. JONES.

Subscribed and sworn to before me this 30th day of January, A. D. 1873.

W. G. THOMPSON,
Clerk of the 1st Jud'l District, Storey County, Nevada.

STATE OF NEVADA, } ss:
County of Storey, }

James Kelly, one of the sureties above named, being duly
697 sworn, says that he is a householder, resident within the State of Nevada, and that he is worth the sum of ten thousand dollars over and above his debts and liabilities, exclusive of property exempt from execution.

JAMES KELLY.

Subscribed and sworn to before me this 30th day of January, A. D. 1873.

W. G. THOMPSON,
Clerk of the First Jud'l District Court, Storey County, Nevada.

STATE OF NEVADA, } ss:
County of Storey, }

P. J. Kennedy, one of the sureties above named, being duly sworn, says that he is a householder, resident within the State of Nevada, and that he is worth the sum of eleven thousand dollars over and above his debts and liabilities, exclusive of property exempt from execution.

P. J. KENNEDY.

Subscribed and sworn to before me this 30th day of January, A. D. 1873.

W. G. THOMPSON,
Clerk of the 1st *Jud'l District Court, Storey County, Nevada.*

STATE OF NEVADA, } ss:
County of Storey, }

D. Driscoll, one of the sureties above named, being duly sworn,
says that he is a householder, resident within the State of
698 Nevada, and that he is worth the sum of ten thousand dollars over and above his debts and liabilities, exclusive of property exempt from execution.

D. DRISCOLL.

Subscribed and sworn to before me this 30th day of January, A. D. 1873.

W. G. THOMPSON,
Clerk of the First Judicial District Court, Storey County, Nevada.

Approved and filed the 31st day of January, A. D. 1873.

STATE OF NEVADA, } ss:
County of Storey, }

In the District Court of the State of Nevada, Storey County.

I, F. L. Wildes, county clerk of Storey county, State of Nevada, and *ex officio* clerk of the district court of the State of Nevada, Storey

county, do hereby certify that I have compared the foregoing and annexed copy of the original bond of Anastasia Patten as administratrix of the estate of Edmond Patten, deceased, on file in my office, and that the same is a true, full, and correct copy thereof.

[SEAL.] In witness whereof I have hereunto set my hand and affixed the seal of said district court this 2 day of September, A. D. 1891.

699

F. L. WILDES,
Clerk of the District Court of the State of Nevada, Storey County,
By —— ——,
Deputy Clerk.

I, Richard Rising, district judge of the State of Nevada, Storey county, do hereby certify that said court is a court of record, having a clerk and seal; that Frank L. Wildes, whose name is subscribed to the annexed certificate and attestation, was at the date of the same and is now the duly elected and qualified county clerk of the county of Storey, State of Nevada, and *ex officio* clerk of said court; that said signature is his genuine handwriting and that all his official acts as such clerk are entitled to full faith and credit.

And I further certify that said attestation is in due form of law and is made by the proper officer.

Witness my hand this 2 day of September, A. D. 1891.

RICHARD RISING,
Presiding District Judge of the State of Nevada.

STATE OF NEVADA, }
County of Storey, } *ss:*

I, F. L. Wildes, county clerk of Storey county, State of Ne-
700 vada, and *ex officio* clerk of the district court of the State of Nevada, do hereby certify that Richa*dr* Rising, whose name is subscribed to the annexed certificate, was at the date of the same and is now district judge of the State of Nevada, Storey county, duly elected and qualified; and I do further certify that the signature attached to the annexed certificate is genuine.

In witness whereof I have hereunto set my hand and affixed the seal of said district court, at my office, in Storey county,
[SEAL.] State of Nevada, this 2 day of September, A. D. 1891.

F. L. WILDES,
Clerk of the District Court of the State of Nevada, Storey County,
By —— ——,
Deputy Clerk.

(Endorsed:) Bond, adm'x. Equity. #12234. Defendants' Exhibit No. 1. A. H. Galt, ex'r. Filed Sep. 30, 1891. R. J. Meigs, clerk.

701 *Guardian's Bond.*

In the Matter of the Estate and Guardianship of EDITH PATTEN, a Minor.

Know all men by these presents that I, Anastasia Patten, as principal, am held and firmly bound unto Edith Patten, a minor, in the sum of sixty thousand dollars, gold coin of the United States, in which sum I am also jointly bound with each of my sureties hereinafter named, respectively, to the extent with each one of them not exceeding the amount of his liability herein and so as not to exceed in all in such joint liability on my part the said sum of sixty thousand dollars, gold coin of the United States, to be paid to the said Edith Patten, a minor; for which payment, well and truly to be made, I bind myself, my and each of my heirs, executors, and administrators, firmly by these presents.

And we, Jacob Becker, Simon Ogg, H. G. Maynard, J. P. Smith, Henry Piper, D. Crosby, J. F. Thompson, S. S. Jones, Charles H. Daley, V. Lemery, W. D. C. Gibson, and J. M. Quimbie, as said sureties, are severally held and firmly bound and jointly with said Anastasia Patten are held and firmly bound unto the said Edith Patten, minor, in the following sums, respectively, to wit: I, the said Jacob Becker, in the sum of ten ($10,000) thousand dollars, U. S. gold coin; I, the said Simon Ogg, in the sum of twenty thousand dollars, U. S. gold coin; I, the said H. G. Maynard, in the sum of twenty-five thousand dollars in U. S. gold coin; I, the said J. P. Smith, in the sum of ten thousand dollars in U. S. gold coin; I, the said Henry Piper, in the sum of five
702 thousand dollars, U. S. gold coin; I, the said D. Crosby, in the sum of five thousand dollars, U. S. gold coin; I, the said J. F. Thompson, in the sum of ten thousand dollars, U. S. gold coin; I, the said S. S Jones, in the sum of ten thousand dollars, U. S. gold coin; I, the said Charles H. Daley, in the sum of twenty-five hundred dollars, U. S. gold coin; I, the said V. Lemery, in the sum of twenty-five hundred dollars, U. S. gold coin; I, the said W. D. C. Gibson, in the sum of five thousand dollars, U. S. gold coin; and I, the said J. M. Quimby, in the sum of ($15,000), U. S. gold coin, to be paid to the — Edith Patten, minor; for the payments of which sums, well and truly to be made, we and each of us respectively bind ourselves, our and each of our heirs, executors, and administrators, jointly and severally, as aforesaid, firmly by these presents.

Sealed with our seals and dated this 21st day of August, A. D. 1873.

The condition of the above obligation is such that whereas, by an order of the district court of the first judicial district of the State of Nevada in and for Storey county, duly made and entered on the 19th day of August, A. D. 1873, the above-bounden Anastasia Patten was appointed guardian of the person and estate of said minor, and by said order it was directed that letters of guardianship be issued

to her upon her giving a bond to said minor, with sufficient sureties, to be approved by said judge of said district court, in the penal sum of sixty thousand dollars, U. S. gold coin, conditioned that
703 said guardian shall faithfully execute the duties of her trust according to law:

Now, therefore, if the said Anastasia Patten shall faithfully execute the duties of her trust according to law, then this obligation shall be void and of no effect; else to remain in full force and virtue.

ANASTASIA PATTEN.	[SEAL.]
JACOB BECKER.	[SEAL.]
W. D. C. GIBSON.	[SEAL.]
H. G. MAYNARD.	[SEAL.]
V. LEMERY.	[SEAL.]
SIMON OGG.	[SEAL.]
J. M. QUIMBIE.	[SEAL.]
D. CROSBY.	[SEAL.]
J. F. THOMPSON.	[SEAL.]
CHAS. H. DALEY.	[SEAL.]
S. S. JONES.	[SEAL.]
HENRY PIPER.	[SEAL.]
J. P. SMITH.	[SEAL.]

Signed, sealed, and delivered in the presence of—
W. G. THOMPSON.

COUNTY OF STOREY, } ss:
State of Nevada, }

Jacob Becker, Simon Ogg, H. G. Maynard, J. P. Smith, Henry Piper, D. Crosby, J. F. Thompson, S. S. Jones, Charles H. Daley, V. Lemery, W. D. C. Gibson, and J. M. Quimbie, being each first
704 duly sworn, each for himself deposes and says that he is one of the sureties to the foregoing bond; that he is a resident and householder within said State of Nevada; that he is worth the sum which he hereinafter says he is worth over and above al- his just debts and liabilities, exclusive of property exempt from execution; and the said Jacob Becker deposes and says that he is worth the sum of ten thousand dollars, U. S. gold coin; and the said Simon Ogg deposes and says that he is worth the sum of twenty thousand dollars over and above all his just debts and liabilities, exclusive of property exempt from execution, in gold coin of the United States; and the said H. G. Maynard says he is worth the sum of twenty-five thousand dollars, U. S. gold coin; and the said J. P. Smith says he is worth the sum of ten thousand dollars, U. S. gold coin; and the said Henry Piper says he is worth the sum of five thousand dollars, U. S. gold coin; and the said J. F. Thompson says he is worth the sum of ten thousand dollars in U. S. gold coin; and the said D. Crosby says he is worth the sum of five thousand dollars in U. S. gold coin; and the said S. S. Jones says he is worth the sum of ten thousand dollars in U. S. gold coin; and the said Charles H. Daley says he is worth the sum of two thousand

five hundred dollars in U. S. gold coin; and the said V. Lemery says he is worth the sum of twenty-five hundred dollars in U. S. gold coin; and the said W. D. C. Gibson says he is worth the sum of five thousand dollars in U. S. gold coin; and the said J. M. Quimbie says he is worth the sum of fifteen thousand dollars in U. S. gold coin.

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JACOB BECKER.
W. D. C. GIBSON.
H. G. MAYNARD.
V. LEMERY.
SIMON OGG.
J. M. QUIMBIE.
D. CROSBY.
J. F. THOMPSON.
CHAS. H. DALEY.
S. S. JONES.
HENRY PIPER.
J. P. SMITH.

Executed and sworn to before me this 23d day of August, A. D. 1873.

W. G. THOMPSON,
County Clerk of Storey County, Nevada.

(Endorsed:) Approved August 25th, 1873. Richard Rising, judge. Filed August 25th, 1873. W. G. Thompson, clerk.

STATE OF NEVADA, } ss:
County of Storey, }

In the District Court of the State of Nevada, Storey County.

I, F. L. Wildes, county clerk of Storey county, State of Nevada, and *ex officio* clerk of the district court of the State of Nevada, Storey county, do hereby certify that I have compared the foregoing and annexed copy of the original bond of Anastasia Patten

706 as guardian of Edith Patten, a minor, on file in my office, and that the same is a true, full, and correct copy thereof.

In witness whereof I have hereunto set my hand and

[SEAL.] affixed the seal of said district court this 2 day of September, A. D. 1891.

F. L. WILDES,
Clerk of the District Court of the State of Nevada, Storey County,
By —— ——,
Deputy Clerk.

I, Richard Rising, district judge of the State of Nevada, Storey county, do hereby certify that said court is a court of record, having a clerk and seal; that Frank L. Wildes, whose name is subscribed to the annexed certificate and attestation, was at the date of the same and is now the duly elected and qualified county clerk of the county of Storey, State of Nevada, and *ex office* clerk of said court; that said

signature is his genuine handwriting, and that all his official acts as such clerk are entitled to full faith and credit; and I further certify that said attestation is in due form of law and is made by the proper officer.

Witness my hand this 2 day of September, A. D. 1891.

RICHARD RISING,
Presiding District Judge of the State of Nevada.

707 STATE OF NEVADA, } ss:
County of Storey, }

I, F. L. Wildes, county clerk of Storey county, State of Nevada, and *ex officio* clerk of the district court of the State of Nevada, do hereby certify that Richard Rising, whose name is subscribed to the annexed certificate, was at the date of the same and is now district judge of the State of Nevada, Storey county, duly elected and qualified; and I do further certify that the signature attached to the annexed certificate is genuine.

[SEAL.] In witness whereof I have hereunto set my hand and affixed the seal of said district court, at my office, in Storey county, State of Nevada, this 2 day of September, A. D. 1891.

F. L. WILDES,
Clerk of the District Court of the State of Nevada, Storey County,
By —— ——,
Deputy Clerk.

(Endorsed:) Edith. Equity. No. 12234. Defendants' Exhibit No. 2. A. H. Galt, examiner. Filed Sep. 30, 1891. R. J. Meigs, clerk.

708 *Bond of Guardian.*

Guardianship of MARY ELLEN PATTEN, a Minor.

Know all men by these presents that *we*, Anastasia Patten, as principal, am held and firmly bound unto Mary Ellen Patten, a minor, in the sum of sixty thousand dollars in U. S. gold coin, in which sum I am also jointly bound with each of my sureties hereinafter named, respectively, to the extent with each *of my sureties hereinafter named, respectively, to the extent with each* one of them not exceeding the amount of his liability herein and so as not to exceed in all in such joint liability on my part the sum of sixty thousand dollars in gold coin of the United States, to be paid to the said Mary Ellen Patten, minor; for which payment, well and truly to be made, I bind myself, my and each of my heirs, executors, and administrators, firmly by these presents; and we, Geo. H. Dana, A. Brisacher, George E. Ferrand, James Kelly, John Kelly, J. T. Goodman, and D. W. Balch, P. Reese, as said sureties, are severally held and firmly bound and jointly with said Anastasia Patten are held and firmly bound unto said Mary Ellen Patten, minor, in the following sums, to wit: I, the said George H. Dana, in the sum of

fifteen thousand dollars, gold coin of the United States; I, the said A. Brisacher, in the sum of fifteen thousand dollars, gold coin of the United States; I, the said George E. Ferrand, in the sum of five thousand dollars, gold coin of the United States; I, the said James Kelly, in the sum of ten thousand dollars, gold coin of the
709 United States; I, the said John Kelly, in the sum of fifteen thousand dollars, gold coin of the United States; I, the said J. T. Goodman, in the sum of twenty-five thousand dollars in United States gold coin, and I, the said D. W. Balch, in the sum of ten thousand dollars, gold coin of the United States; I, the said P. Reese, in the sum of twenty-five thousand dollars in U. S. gold coin, to be paid to the said Mary Ellen Patten, minor; for the payment of which sum, well and truly to be made, we and each of us respectively bind ourselves, our and each of our heirs, executors, and administrators, jointly and severally, as aforesaid, by these presents.

Sealed with our seals and dated this 20th day of August, A. D. 1873.

The condition of the above obligation is such that whereas, by an order of the district court of the State of Nevada in and for Storey county, duly made and entered on the 19th day of August, A. D. 1873, the above-bounden Anastasia Patten was appointed guardian of the person and estate of said minor, and directing that letters of guardianship be issued to her upon her giving a bond to said minor, with sufficient sureties to be approved by the judge of the said district court, in the penal sum of sixty thousand dollars in gold coin of the United States, condition- that such guardian shall faithfully execute the duties of her trust according to law: Now, therefor-, if the said Anastasia Patten shall faithfully execute the duties of her trust according to law, then this obligation shall be void and of no effect else to remain in full force and virtue.

710

ANASTASIA PATTEN.	[SEAL.]
JOHN KELLY.	[SEAL.]
GEO. H. DANA.	[SEAL.]
A. BRISACHER.	[SEAL.]
PHILLIP REESE.	[SEAL.]
J. T. GOODMAN.	[SEAL.]
JAMES KELLY.	[SEAL.]
D. W. BALCH.	[SEAL.]
GEO. E. FERRAND.	[SEAL.]

Signed, sealed, and delivered in the presence of—

W. G. THOMPSON.

COUNTY OF STOREY, }
State of Nevada. }

John Kelly, Geo. H. Dana, and A. Brisacher, being duly sworn, each for himself says that he is one of the sureties named in the above bond; that he is a resident and householder within said State and is worth the said sum of fifteen thousand dollars in gold coin

of the United States over and above all his just debts and liabilities, exclusive of property exempt from execution.

GEO. H. DANA.
A. BRISACHER.
JOHN KELLY.

Subscribed and sworn to before me this 22d day of August, A. D. 1873.

W. G. THOMPSON,
County Clerk Storey County, Nevada.

The name of R. P. Keating "and the words" "I, the said R. P. Keating, in the sum of twenty-five thousand dollars, gold
711 coin of the United States," were erased on the second page of this bond before the execution thereof.

Witness:
W. G. THOMPSON.

COUNTY OF STOREY, }
State of Nevada. }

P. Reese and J. T. Goodman, being duly sworn, each for himself deposes and says that he is one of the sureties named in the above bond; that he is a resident and householder within said State; that he is worth said sum of twenty-five thousand dollars in United States gold coin over and above all his just debts and liabilities, exclusive of property exempt from execution.

J. T. GOODMAN.
PHILLIP REESE.

Subscribed and sworn to before me this 22d day of August, A. D. 1873.

W. G. THOMPSON,
County Clerk Storey County, Nevada.

The name of "R. P. Keating" on the third line of this page was erased and that of "P. Reese" inserted before the signing of this justification.

Witness:
W. G. THOMPSON.

COUNTY OF STOREY, }
State of Nevada. }

James Kelly and D. W. Balch, being each first duly sworn, each deposes and says that he is a resident and householder within
712 said State; that he is worth the sum of ten thousand dollars, gold coin of the United States, over and above all his just debts and liabilities, exclusive of property exempt from execution, and that he is one of the sureties of the foregoing bond.

JAMES KELLY.
D. W. BALCH.

Subscribed and sworn to before me this 22d day of August, A. D. 1873.

W. G. THOMPSON,
County Clerk of Storey County, Nevada.

COUNTY OF STOREY, }
State of Nevada. }

George E. Ferrand, being first duly sworn, deposes and says that he is one of the sureties to the foregoing bond; that he is a resident and freeholder within said State of Nevada; that he is worth the sum of five thousand dollars, gold coin of the United States, over and above all his just debts and liabilities.

GEO. E. FERRAND.

Subscribed and sworn to before me this 21st day of August, A. D. 1873.

W. G. THOMPSON,
County Clerk of Storey County, Nevada.

Endorsed: Filed Aug't 25th, 1873.

713 STATE OF NEVADA, }
County of Storey, } *ss:*

In the District Court of the State of Nevada, Storey County.

I, F. L. Wildes, county clerk of Storey county, State of Nevada, and *ex officio* clerk of the district court of the State of Nevada, Storey county, do hereby certify that I have compared the foregoing and annexed copy of the original bond of Anastasia Patten as guardian of Mary Ellen Patten, a minor, on file in my office, and that the same is a true, full, and correct copy thereof.

In witness whereof I have hereunto set my hand and
[SEAL.] affixed the seal of said district court this 2d day of September, A. D. 1891.

F. L. WILDES,
Clerk of the District Court of the State of Nevada, Storey County,
By —— ——,
Deputy Clerk.

I, Richard Rising, district judge of the State of Nevada, Storey county, do hereby certify that said court is a court of record, having a clerk and seal; that Frank L. Wildes, whose name is subscribed to the annexed certificate and attestation, was at the
714 date of the same and is now the duly elected and qualified county clerk of the county of Storey, State of Nevada, and *ex officio* clerk of said court; that said signature is his genuine handwriting, and that all his official acts as such clerk are entitled to full faith and credit.

And I further certify that said attestation is in due form of law and is made by the proper officer.

Witness my hand this 2 day of September, A. D. 1891.

RICHARD RISING,
Presiding District Judge of the State of Nevada.

STATE OF NEVADA, } ss:
County of Storey, }

I, F. L. Wildes, county clerk of Storey county, State of Nevada, and *ex officio* clerk of the district court of the State of Nevada, do hereby certify that Richard Rising, whose name is subscribed to the annexed certificate, was at the date of the same and is now district judge of the State of Nevada, Storey county, duly elected and qualified; and I do further certify that the signature attached to the annexed certificate is genuine.

[SEAL.] In witness whereof I have hereunto set my hand and affixed the seal of said district court, at my office, in Storey
715 county, State of Nevada, this 2 day of September, A. D. 1891.

F. L. WILDES,
Clerk of the District Court of the State of Nevada, Storey County,
By —— ——,
Deputy Clerk.

(Endorsed:) Mary. Equity. #12234. Defendants' Exhibit No. 3. A. H. Galt, ex'r. Filed Sep. 30, 1891. R. J. Meigs, clerk.

716 *Guardian's Bond.*

In the Matter of the Estate and Guardianship of NELLIE PATTEN, a Minor.

Know all men by these presents that I, Anastasia Patten, as principal, am held and firmly bound unto Nellie Patten, a minor, in the sum of sixty thousand dollars, gold coin of the United States, in which sum I am also jointly bound with each of my sureties hereinafter named, respectively, to the extent with each *of my sureties hereinafter named, respectively, to the extent with each* one of them not exceeding the amount of his liability herein and so as not to exceed in all in such joint liability on my part the sum of sixty thousand dollars, in gold coin of the United States, to be paid to the said Nellie Patten, minor; for which payment, well and truly to be made, I bind myself, my and each of my heirs, executors, and administrators, firmly by these presents.

And we, William Mooney, Matthew J. Redding, J. J. Langan, Owen Fraser, C. C. Stevenson, Mat. Crowley, H. Roos, Charles Baker, Mat. Rapp, W. S. Wood, H. W. Putnam, F. Kleupfer, C. F. Kleupfer, and Charles Lawrence, as said sureties, are severally held and firmly bound and jointly with said Anastasia Patten and held and firmly bound unto said Nellie Patten, a minor, in the following sums, to wit: I, the said William Mooney, in the sum of fifteen thousand dollars, U. S. gold coin; I, the said Mathew J. Redding, in the sum of twenty thousand dollars, U. S. gold coin; I, the said J. J. Langan, in the sum of five thousand dollars,
717 U. S. gold coin; I, the said Owen Fraser, in the sum of five thousand dollars, U. S. gold coin; I, the said C. C. Stevenson,

in the sum of twenty thousand dollars, U. S. gold coin; I, the said Mat. Crowley, in the sum of ten thousand dollars, U. S. gold coin; I, the said H. Roos, in the sum of five thousand dollars, U. S. gold coin; I, the said Charles Baker, in the sum of five thousand dollars, U. S. gold coin; I, the said Mat. Rapp, in the sum of five thousand dollars, U. S. gold coin; the said W. S. Wood, in the sum of five thousand dollars in U. S. gold coin; the said H. W. Putnam, in the sum of ten thousand dollars in U. S. gold coin; the said F. Kleupfer, in the sum of five thousand dollars in U. S. gold coin; the said *F.* C. F. Kleupfer, in the sum of five thousand dollars in U. S. gold coin; the said Charles M. Lawrence, in the sum of five thousand dollars, U. S. gold coin, to be paid to the said Nellie Patten, minor; for the payment of which sums, well and truly to be made, we and each of us respectively bind ourselves, our and each of our heirs, executors, and administrators, jointly and severally, as aforesaid, firmly by these presents.

Sealed with our seals and dated this 21st day of August, A. D. 1873.

The condition of the above obligation is such that whereas, by an order of the district court of the first judicial district of the State of Nevada in and for the county of Storey, duly made and entered on the 19th day of August, A. D. 1873, the above-bounden Anastasia Patten was appointed guardian of the person and estate of said minor, and letters of guardianship were directed to be issued to her upon her giving a bond to said minor, with sufficient sureties, to be approved by said judge of said district court, in the penal
718 sum of sixty thousand dollars, U. S. gold coin, conditioned that said guardian shall faithfully execute the duties of her trust according to law:

Now, therefore, if the said Anastasia Patten shall faithfully execute the duties of her trust according to law, then this obligation shall be void and of no effect; else to remain in full force and virtue.

ANASTASIA PATTEN.	[SEAL.]
OWEN FRASER.	[SEAL.]
MAT. CRAWLEY.	[SEAL.]
WM. MOONEY.	[SEAL.]
H. ROOS.	[SEAL.]
CHAS. BAKER.	[SEAL.]
MATT. RAPP.	[SEAL.]
W. S. WOODS.	[SEAL.]
H. W. PUTNAM.	[SEAL.]
MATHEW J. REDDING.	[SEAL.]
J. J. LANGAN.	[SEAL.]
F. KLEUPFER.	[SEAL.]
C. F. KLEUPFER.	[SEAL.]
CHAS. M. LAWRENCE.	[SEAL.]
C. C. STEVENSON.	[SEAL.]

Signed, sealed, and delivered in presence of—
W. G. THOMPSON.

COUNTY OF STOREY, } ss:
State of Nevada, }

William Mooney, Matthew J. Redding, J. J. Langan, Owen
719 Fraser, C. C. Stevenson, Matt. Crowley, H. Roos, Charles Baker, Matt. Rapp, W. S. Wood, H. W. Putnam, F. Kleupfer, C. F. Kleupfer, and Charles M. Lawrence, being each first duly sworn, each for himself deposes and says that he is a resident and householder within said county and State; that he is one of the sureties to the foregoing bond; that he is worth the sum which he hereinafter says he is worth over and above all his just debts and liabilities, exclusive of property exempt from execution, and the said William Mooney says he is worth the sum of fifteen thousand dollars in U. S. gold coin, and the said Mathew J. Redding says he is worth the sum of twenty thousand dollars in U. S. gold coin, and the said J. J. Langan says he is worth the sum of five thousand dollars in U. S. gold coin, and the said Owen Fraser says he is worth the sum of five thousand dollars in U. S. gold coin, and the said C. C. Stevenson says he is worth the sum of twenty thousand dollars in U. S. gold coin, and the said Matt. Crowley says he is worth the sum of ten thousand dollars in U. S. gold coin, and the said H. Roos says he is worth the sum of five thousand dollars, U. S. gold coin, and the said Charles Baker says he is worth the sum of five thousand dollars, U. S. gold coin, and the said Matt. Rapp says he is worth the sum of five thousand dollars in U. S. gold coin, and the said W. S. Wood says he is worth the sum of five thousand dollars in U. S. gold coin, and the said H. W. Putnam says he is worth the sum of ten thousand dollars in U. S. gold coin, and the said F.
Kleupfer says he is worth the sum of five thousand dollars,
720 U. S. gold coin, and the said C. F. Kleupfer says he is worth the sum of five thousand dollars in U. S. gold coin, and the said Charles M. Lawrence says he is worth the sum of five thousand dollars, U. S. gold coin.

MATHEW J. REDDING.
H. W. PUTNAM.
W. S. WOOD.
OWEN FRASER.
MATT. CROWLEY.
WILLIAM MOONEY.
H. ROOS.
CHAS. BAKER.
MATT. RAPP.
P. J. LANGAN.
F. KLEUPFER.
C. F. KLEUPFER.
C. C. STEVENSON.
CHARLES M. LAWRENCE.

Subscribed and sworn to before me this 22d day of August, A. D. 1873.

[Seal of the District Court of Nevada, Storey County.]

W. G. THOMPSON,
County Clerk of Storey County, State of Nevada.

Endorsed: Approved August 25th, 1873. Richard Rising, judge. Filed August 25th. W. G. Thompson, clerk.

721 STATE OF NEVADA, } ss:
County of Storey, }

In the District Court of the State of Nevada, Storey County.

I, F. L. Wildes, county clerk of Storey county, State of Nevada, and *ex officio* clerk of the district court of the State of Nevada, Storey county, do hereby certify that I have compared the foregoing and annexed copy of the original bond of Anastasia Patten as guardian of Nellie Patten, a minor, on file in my office, and that the same is a true, full, and correct copy thereof.

In witness whereof I have hereunto set my hand and af-
[SEAL.] fixed the seal of said district court this 2 day of September, A. D. 1891.

F. L. WILDES,
Clerk of the District Court of the State of Nevada, Storey County,
By —— ——,
Deputy Clerk.

I, Richard Rising, district judge of the State of Nevada, Storey county, do hereby certify that said court is a court of record, having a clerk and seal; that Frank L. Wildes, whose name is subscribed to the annexed certificate and attestation, was at the date of the same and is now the duly elected and qualified county clerk of the county of Storey, State of Nevada, and *ex officio* clerk of said
722 court; that said signature is his genuine writing, and that all his official acts as such clerk are entitled to full faith and credit.

And I further certify that said attestation is in due form of law and is made by the proper officer.

Witness my hand this 2 day of September, A. D. 1891.

RICHARD RISING,
Presiding District Judge of the State of Nevada.

STATE OF NEVVCA, } ss:
County of Storey, }

I, F. L. Wildes, county clerk of Storey county, State of Nevada, and *ex officio* clerk of the district court of the State of Nevada, Storey county, do hereby certify that Richard Rising, whose name is subscribed to the annexed certificate, was at the date of the same and is now district judge of the State of Nevada, Storey county, duly elected and qualified; and I do further certify that the signature attached to the annexed certificate is genuine.

In witness whereof I have hereunto set my hand and af-
[SEAL.] fixed the seal of said district court, at my office, in Storey county, State of Nevada, this 2 day of September, A. D. 1891.

F. L. WILDES,
723 *Clerk of the District Court of the State of Nevada, Storey County,*
By —— ——,
Deputy Clerk.

(Endorsed:) Helen. Equity. #12234. Defendants' Exhibit # 4. A. H. Galt, examiner. Filed Sept. 30, 1891. R. J. Meigs, clerk.

724 Estate of EDMOND PATTEN, Deceased.

In the District Court, 1st Judicial District, in and for the County of Storey, State of Nevada.

Letters of Administration.

In the Matter of the Estate of EDMOND PATTEN, Deceased.

STATE OF NEVADA, }
County of Storey. }

Anastasia Patten is hereby appointed administratrix of the estate of Edmond Patten, deceased.

Witness W. G. Thompson, clerk of the district court of the 1st judicial district in and for the county of Storey, State of [SEAL.] Nevada, with the seal of the court affixed, the 1st day of February, A. D. 1873.

By order of the court.

W. G. THOMPSON, *Clerk.*

STATE OF NEVADA, }
County of Storey, } *ss:*

I, Anastasia Patten, do solemnly swear that I will support, protect, and defend the Constitution and Government of the United States and the constitution and government of the State of Nevada against all enemies, whether domestic or foreign, and that I
725 will bear true faith, allegiance, and loyalty to the same, any ordinance, resolution, or law of any State convention or legislature to the contrary notwithstanding, and, further, that I do with this a full determination, pledge, and purpose, without any mental reservation or evasion whatsoever; and I do further solemnly swear that I have not fought a duel nor sent or accepted a challenge to fight a duel, nor been a second to either party, nor in any manner aided or assisted in such duel, nor been knowingly the bearer of such challenge or acceptance sin-e the adoption of the constitution of the State of Nevada, and that I will not be so engaged or concerned, directly or indirectly, in or about any such duel during my continuance in office; and, further, that I will well and faithfully perform all the duties of the office of administratrix of the estate of Edmond Patten, deceased, on which I am about to enter, so help me God.

ANASTASIA PATTEN.

Subscribed and sworn to before me this 31st day of January, A. D. 1873.

W. G. THOMPSON, *Clerk.*

726 STATE OF NEVADA, } ss:
County of Storey, }

In the District Court of the State of Nevada, Storey County.

I, F. L. Wildes, county clerk of Storey county, State of Nevada, and *ex officio* clerk of the district court of the State of Nevada, Storey county, do hereby certify that I have compared the foregoing and annexed copy of the original letters of administration issued to Anastasia Patten as administratrix of the estate of Edmond Patten, deceased, on file in my office, and that the same is a true, full, and correct copy thereof.

In witness whereof I have hereunto set my hand and
[SEAL.] affixed the seal of said district court this 2 day of September, A. D. 1891.

F. L. WILDES,
Clerk of the District Court of the State of Nevada, Storey County,
By —— ——,
Deputy Clerk.

I, Richard Rising, district judge of the State of Nevada, Storey county, do hereby certify that said court is a court of record, having a clerk and seal; that Frank L. Wildes, whose name is subscribed to the annexed certificate and attestetion, was at the date of
727 the same and is now the duly elected and qualified county clerk of the county of Storey, State of Nevada, and *ex officio* clerk of said court; that said signature is his genuine handwriting, and that all his official acts as such clerk are entitled to full faith and credit.

And I further certify that said attestation is in due form of law and is made by the proper officer.

Witness my hand this 2 day of September, A. D. 1891.

RICHARD RISING,
Presiding District Judge of the State of Nevada.

STATE OF NEVADA, } ss:
County of Storey, }

I, F. L. Wildes, county clerk of Storey county, State of Nevada, and *ex officio* clerk of the district court of the State of Nevada, Storey county, do hereby certify that Richard Rising, whose name is subscribed to the annexed certificate, was at the date of the same and is now district judge of the State of Nevada, Storey county, duly elected and qualified; and I do further certify that the signature attached to the annexed certificate is genuine.

In witness whereof I have hereunto set my hand and
[SEAL.] affixed the seal of said district court, at my office, in Storey county, State of Nevada, this 2 day of September, A. D. 1891.

728 F. L. WILDES,
Clerk of the District Court of the State of Nevada, Storey County,
By —— ——,
Deputy Clerk.

(Endorsed:) Letters adm'x. Equity. No. 12234. Defendants' Exhibits No. 5. A. H. Galt, ex'r. Filed Sep. 30, 1891. R. J. Meigs, clerk.

729 *Bond of Guardian.*

In the Matter of the Guardianship of JOSEPHINE PATTEN, a Minor.

Know all men by these presents that I, Anastasia Patten, principal, am held and firmly bound unto Josephine Patten, a minor, in the sum of sixty thousand dollars, gold coin of the United States, in which sum I am also jointly bound with each of my sureties hereinafter named, respectively, to the extent with each of them not exceeding the amount of his liabilities herein and so as not to exceed in all in such joint liability on my part the said sum of sixty thousand dollars in U. S. gold coin, to be paid to the said Josephine Patten, minor; for which payment, well and truly to be made, I bind myself, my and each of my heirs, executors, and administrators, firmly by these presents; and we, Mark Strouse, J. P. Martin, John Lambert, H. Godfrey, M. Gundlach, F. M. Thayer, T. R. McGum, R. J. Butler, L. B. Frankel, Sol. Frankel, and S. W. Chublick, as said sureties, are severally held and firmly bound and jointly with said Anastasia Patten are held and firmly bound unto Josephine Patten in the following sums respectively, to wit: I, the said Mark Strouse, in the sum of fifteen thousand dollars in U. S. gold coin; I, the said J. P. Martin, in the sum of five thousand dollars, U. S. gold coin; I, the said John Lambert, in the sum of five thousand dollars in U. S. gold coin; I, the said H. Godfrey, in the sum of twenty thousand dollars, U. S. gold coin; I, the said M. Gundlach, in the sum of ten thousand dollars in U. S. gold coin; I,
730 the said F. M. Thayer, in the sum of five thousand dollars in U. S. gold coin; I, the said T. R. McGum, in the sum of five thousand dollars in U. S. gold coin; I, the said R. J. Butler, in the sum of ten thousand dollars, U. S. gold coin; I, the said L. B. Frankel, in the sum of twenty-five thousand dollars in U. S. gold coin; I, the said Sol. Frankel, in the sum of ten thousand dollars, U. S. gold coin; I, the said S. W. Chublick, in the sum of ten thousand dollars in U. S. gold coin, to be paid to the said Josephine Patten, minor; for the payment of which sums, well and truly to be made, we and each of us respectively bind ourselves, our and each of our heirs, executors, and administrators, jointly and severally, as aforesaid, firmly by these presents.

Sealed with our seals and dated this 20th day of August, A. D. 1873.

The conditions of the above obligation is such that whereas, by an order of the district court of the first judicial district of the State of Nevada in and for Storey county, made on the 19th day of August, A. D. 1873, the above-bounden Anastasia Patten was appointed guardian of the person and estate of said minor, and said court by said order directed that letters of guardianship be issued

to her upon her giving a bond to said minor, with sufficient sureties to be approved by the judge of said district court, in the penal sum of sixty thousand dollars in U. S. gold coin, conditioned that said guardian faithfully execute the duties of the trust according to law: Now, therefor-, if the said Anastasia Patten shall faithfully execute the duties of her trust according to law, then this obligation shall be void and of no effect; else to remain in full force and virtue.

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ANASTASIA PATTEN. [SEAL.]
S. W. CHUBLICK. [SEAL.]
MARK STROUSE. [SEAL.]
J. P. MARTIN. [SEAL.]
JOHN LAMBERT. [SEAL.]
H. GODFREY. [SEAL.]
SOLOMON FRANKEL. [SEAL.]
T. R. McGUM. [SEAL.]
L. B. FRANKEL. [SEAL.]
R. J. BUTLER. [SEAL.]
FRANK M. THAYER. [SEAL.]
M. GUNDLACH. [SEAL.]

Signed, sealed, and delivered in the presence of—
W. G. THOMPSON.

COUNTY OF STOREY, }
State of Nevada, }

Mark Strouse, J. P. Martin, John Lambert, H. Godfrey, M. Gundlach, F. M. Thayer, T. R. McGum, R. J. Butler, L. B. Frankel, Sol. Frankel, and S. W. Chublick, being each first duly sworn, each for himself deposes and says that he is a resident and householder within said State of Nevada; that he is one of the sureties on the foregoing bond; that he is worth the sum hereinafter specified, which he deposes he is worth and for which he is liable on said bond, over and above all his just debts and liabilities, exclusive of property exempt from execution, and the said Mark Strouse deposes and says he is worth the sum of fifteen thousand dollars in U. S. gold coin,

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and the said J. P. Martin deposes and says that he is worth the sum of five thousand dollars in U. S. gold coin, and the said John Lambert says he is worth the sum of five thousand dollars in U. S. gold coin, and the said H. Godfrey says he is worth the sum of twenty thousand dollars in U. S. coin, and the said M. Gundlach says he is worth the sum of ten thousand dollars in U. S. gold coin, and the said F. M. Thayer says he is worth the sum of five thousand dollars, U. S. gold coin, and the said T. R. M'Gum says he is worth the sum of five thousand dollars in U. S. gold coin, and the said R. J. Butler says he is worth the sum of ten thousand dollars in U. S. gold coin, and the said L. B. Frankel says he is worth the sum of twenty-five thousand dollars in U. S. gold coin, and the said Sol. Frankel says he is worth the sum of ten thousand dollars in U. S.

gold coin, and the said S. W. Chublick says he is worth the sum of ten thousand dollars, U. S. gold coin.

MARK STROUSE.
J. P. MARTIN.
JOHN LAMBERT.
T. B. M'GUM.
H. GODFREY.
SOLOMON FRANKEL.
L. B. FRANKEL.
R. J. BUTLER.
M. GUNDLACH.
S. W. CHUBLICK.
FRANK M. THAYER.

Subscribed and sworn to before me this 22d day of August, A. D. 1873.

W. G. THOMPSON,
County Clerk Storey County, Nevada.

Endorsed: Filed Aug't 25, 1873.

733 STATE OF NEVADA, } ss:
County of Storey, }

In the District Court of the State of Nevada, Storey County.

I, F. L. Wildes, county clerk of Storey county, State of Nevada, and *ex officio* clerk of the district court of Nevada, Storey county, do hereby certify that I have compared the foregoing and annexed copy of the original bond of Anastasia Patten as guardian of Josephfull ine Patten, a minor, on file in my office, and that the same is a and correct copy thereof.

In witness whereof I have hereunto set my hand and affixed the seal of said district court this 2 day of September, A. D.
[SEAL.] 1891.

F. L. WILDES,
Clerk of the District Court of the State of Nevada, Storey County,
By —— ——
Deputy Clerk.

I, Richard Rising, district judge of the State of Nevada, Storey county, do hereby certify that said court is a court of record, having a clerk and seal; that Frank L. Wildes, whose name is sub-
734 scribed to the annexed certificate and attestation, was at the date of the same and is now the duly elected and qualified county clerk of the county of Storey, State of Nevada, and *ex officio* clerk of said court; that said signature is his genuine handwriting, and that all his official acts as such clerk are entitled to full faith and credit.

And I further certify that said attestation is in due form of law and is made by the proper officer.

Witness my hand this 2 day of September, A. D. 1891.

RICHARD RISING,
Presiding District Judge of the State of Nevada.

STATE OF NEVADA, }
County of Storey, } ss:

I, F. L. Wildes, county clerk of Storey county, State of Nevada, and *ex officio* clerk of the district court of the State of Nevada, Storey county, do hereby certify that Richard Rising, whose name is subscribed to the annexed certificate, was at the date of the same and is now district judge of the State of Nevada, Storey county, duly elected and qualified, and I do further certify that the signature attached to the annexed certificate is genuine.

In witness whereof I have hereunto set my hand and
[SEAL.] affixed the seal of said district court, at my office, in Storey county, State of Nevada, this 2 day of September,
735 A. D. 1891.

F. L. WILDES,
Clerk of the District Court of the State of Nevada, Storey County,
By —— ——,
Deputy Clerk.

(Endorsed:) Josephine. Equity. #12234. Defendants' Exhibit No. 6. A. H. Galt, ex'r. Filed Sep. 30, 1891. R. J. Meigs, clerk.

736 *Anastasia Patten, San Francisco, Cal.*

CR.

Dates.	Journal.	Nos. of bonds.	Total number and value of each bond.	Total values.
1877, Aug. 14	209	By 1451-1460	10- 5,000	50,000
" "	"	" 3028-32	5-10,000	50,000
1879, May 19	138	" 2383-2396	14-50,000	700,000
1885, Jan. 12	4	" 57179-80	2-10	20,000
" Apr. 16	233	" 58312-16	5-10	50,000
1886, Apr. 1	42	" 142491-94	4- 1	4,000
July 12	244	" 144314-17	4- 1	4,000
Nov. 30	99	" 66518-20	3-10	30,000
1887, Feb. 17	230	" 3105		20,000
" Oct. 28	278	" 35427		5,000
" " "	"	" 71594-6	3-10	30,000
1888, Jan. 16	400	" 72865-73	9-10	90,000
" Apr. 25	163	" 166601-4	4- 100	400
" "	"	" 70334		500
" "	"	" 36115		5,000
" "	"	74592-93	2-10	20,000
Total				$1,078,900

Anastasia Patten, San Francisco, Cal.—Continued.

DR.

Dates.	Journal.	Nos. of bonds.	Total number and value of each bond.	Total values.
1878, Dec. 11	98	To 3031-2	2-10	20,000
" Dec. 14	103	" 1451-6	6- 5	30,000
737				
1879, Jan. 2	132	To 1457-60	4- 5	20,000
" " "	"	" 3028-20	3-10	30,000
1885, Jan. 12	4	" 2383		50,000
" Apr. 16	233	" 2385		50,000
" " "	234	" 2384		50,000
" " 24	253	" 57180		10,000
" " 28	263	" 57179		10,000
" June 11	345	" 58315		10,000
" Aug. 21	71	" 58316		10,000
1886, Apr. 1	42	" 2396		50,000
" July 12	244	" 58312-13	2-10	20,000
Amount forward				$360,000
1886, Oct. 12	397	" 142491-2		
		" 144317	3- 1	3,000
" " 26	24	" 142493-4	2- 1	2,000
" Nov. 27	81	" 144314-16	3- 1	3,000
" " 27	"	" 58314		10,000
" " 30	99	" 2394		50,000
" Dec. 1	100	" 2395		50,000
1887, Feb. 17	230	" 2392-3	2-50	100,000
" July 14	98	" 66519		10,000
738				
1887, July 29	128	To 66520		10,000
" Oct. 1	188	" 66518		10,000
" " 13	230	" 2386		50,000
" " 14	233	" 3105		20,000
" " 28	278	" 2387		50
" Nov. 15	311	" 71595		10
18	316	" 35427		5
"	"	" 71596		10
26	327	" 71594		10
1888, Jan. 7	379	" 2391		50
" " 16	400	" 2388-90	3-50	150
" Feb. 29	89	" 72865		10
" Apr. 9	133	" 72866		10
" " 25	163	" 72868-9		
		72872-3	4-10	40
" May 19	207	" 74592-93	2-10	20
" " 29	236	" 72867		10
" May 31	238	" 166601-4	4- 100	400
" " "	"	" 70334		500
31	244	" 36115		5,000
July 11	299	" 72870		10,000
739				
Aug. 25	379	To 72871		10,000
				$1,078,900

Acc. closed.

(Endorsed:) Equity. # 12234. Defendants' Exhibit No. 10. Alexander H. Galt, examiner. Filed Sep. 30, 1891. R. J. Meigs, clerk.

740 *Order for Hearing in General Term in First Instance.*

Filed June 13, 1892. John R. Young, clerk.

MARY E. PATTEN and Others
vs.
AUGUSTA P. GLOVER and Others. } In Equity. No. 12234.

Ordered that this cause be, and the same is hereby, certified to the general term, to be heard in the first instance.

(Signed) A. B. HAGNER.

June 11, 1892.

(Endorsed:) No. 12234. Equity. Patten *et al. v.* Glover *et al.* Certificate to the general term. Filed June 13, 1892. J. R. Young, clerk.

741 *Extract from Equity Rule No. 63 of the Supreme Court of the District of Columbia.*

"Answer—when evidence.

"If the complainant in his bill waive an answer under oath, or only require an answer under oath to certain specified paragraphs of his bill, the answer of the defendant, though under oath, except such parts of it as shall be directly responsive to such paragraph, shall not be evidence in his favor unless the cause be set down on bill and answer only, but may nevertheless be used as an affidavit, with the same effect as heretofore, on motion to grant or dismiss an injunction or any other incidental motion in the cause; but this shall not prevent a defendant from being a witness in his own behalf under section 876 of the Revised Statutes relating to the District of Columbia."

I hereby certify that the foregoing is a true extract from equity rule No. 63 of the supreme court of the District of Columbia in force now and since and including the eighth day of January, A. D. 1890.

[Seal Supreme Court D. C.]

J. R. YOUNG, *Clerk*,
By L. P. WILLIAMS, *Ass't Clerk*.

(Endorsed:) 94. Mary E. Patten *et al. v.* Augusta P. Glover *et vir.* Extract from eq. rule 63, supreme court D. C. Certified. Court of Appeals, District of Columbia. Filed Aug. 22, 1893. Robert Willett, clerk.

742 *Equity Rule No.* 31 *of the Supreme Court of the District of Columbia.*

"31. If the plaintiff shall not reply to a plea or shall not set down a plea or demurrer for argument on the next rule day (provided the same is filed five days before the commencement of the term), he shall be deemed to admit the truth and sufficiency thereof."

I hereby certify that the foregoing is a true copy of equity rule No. 31 of the supreme court of the District of Columbia in force now and since and including the fourteenth day of November, A. D. 1890.

[Seal Supreme Court D. C.]

J. R. YOUNG, *Clerk*,
By L. P. WILLIAMS, *Ass't Clerk*.

(Endorsed:) 94. Mary E. Patten *et al. v.* Augusta P. Glover *et al.* Copy equity rule 31, supreme court D. C. Certified. Court of Appeals, District of Columbia. Filed Aug. 22, 1893. Robert Willett, clerk.

743 *General Rule No.* 3 *of the Supreme Court of the District of Columbia.*

"3. The first Tuesday of every month, except August, shall be the return day of process, appearance day of parties, and the day on which rules or orders may be made in the clerk's office to speed any cause depending in the court, and the term return day, appearance day, or rule day always designates the first Tuesday in the month to which it relates."

I hereby certify that the foregoing is a true copy of general rule No. 3 of the supreme court of the District of Columbia in force now and since and including the fourteenth day of November, A. D. 1890.

[Seal Supreme Court D. C.]

J. R. YOUNG, *Clerk*,
By L. P. WILLIAMS, *Ass't Clerk*.

(Endorsed:) 94. Mary E. Patten *et al. vs.* Augusta P. Glover *et al.* Copy general rule 3. supreme court D. C. Certified. Court of Appeals District, of Columbia. Filed Aug. 22, 1893. Robert Willett, clerk.

744 *Minute Entry.*

Court of Appeals of the District of Columbia.

MARY E. PATTEN *et al.*, Compl'ts, }
v. } No. 94.
AUGUSTA P. GLOVER *et al.* }

Argued by Mr. H. E. Davis, for complainants, and submitted by Mr. John M. Glover, for defendants.
September 29, 1893.

745 Court of Appeals of the District of Columbia.

MARY E. PATTEN *et al.* }
v. }
AUGUSTA P. GLOVER *et al.* }

Mr. Justice SHEPARD delivered the opinion of the court:

The bill of complaint in this case was filed January 8, 1890, in the supreme court of the District of Columbia by Mary E., Josephine A., Edith A. and Helen Patten against Augusta P. Glover, in her own right and as executrix of the estate of Anastasia Patten, deceased. John M. Glover, husband of defendant, has made himself a party to the suit as a defendant also.

After some preliminary orders, striking out demurrers for non-compliance with the rules, &c., and sustaining one in part, which caused an amended bill to be filed, the cause stood for hearing in the special term, from whence it was certified to the general term to be there heard in the first instance. No action having been taken in the general term, the cause has been transferred under the law to this court.

The complainants and defendant, Augusta P. Glover, are the daughters and only heirs-at-law of Anastasia Patten, late of the District of Columbia, deceased, and of Edmund Patten, late of the State of Nevada, deceased. Anastasia Patten died Sept. 11, 1888, leaving a will, dated Dec. 23, 1879, by which she devised and bequeathed the whole of her estate, subject to $45,000 in legacies, to her said daughters, and named such of them as might have attained majority at her death as executrices. The five daughters qualified as executrices of the will in the supreme court of the District.

The will not having been signed in the presence of the number of witnesses required by the laws of the District, was invalid to pass real estate situated therein, of which the bulk of the estate consisted, and the same therefore descended to the five daughters as if she had died intestate.

It appears that upon the death of her husband, Mrs. Patten became administratrix of his estate and guardian of the children aforesaid, in the State of Nevada, where he died, and where all the parties then lived.

By the laws of Nevada, on the death of her husband intestate,

Mrs. Patten became entitled to one-half of the estate and the children inherited the other. Mrs. Patten gave proper bonds and administered and held the whole estate until her death, but never filed any account of her administration, and in fact, kept no regular accounts with her children, and preserved no regular vouchers.

In September, 1885, in order to relieve her sureties probably, Mrs. Patten undertook to adjust her accounts with her children, and in doing so called in the assistance of Curtis J. Hillyer. The result was the preparation and execution of the following paper by all of the children except Helen, who was not then twenty-one years of age:

"Whereas, our mother, Anastasia Patten, as guardian for us, received in the years 1873, '4, '5 certain amounts of money, being our portion by inheritance of the estate of our deceased father; and

"Whereas, no special separate investments of the money so received have been made by our said guardian, but the same has been by her kept and safely invested in connection with moneys belonging to her in her own right derived from the said estate; and

"Whereas our said guardian has up to the present date had entire charge of our maintenance and education, and has during the past thirteen years incurred a large amount of family expenses for our benefit, of which expenses no account has been kept by her; and

"Whereas we and our said guardian are now desirous of settling the account between us in a just and equitable manner without attempting to secure technical accuracy in such settlement; and

746

"Whereas our said mother and guardian has submitted to us for inspection all accounts and papers in her possession touching or relating to the receipts and disbursements entering into such accounting and we have personally general knowledge concerning the family expenses during said period; and

"Whereas from such examination and knowledge we believe that by a payment to each of us by our said guardian of the sum of $101,600 an equitable settlement will be made and full justice done to each of us:

"Now, therefore, each of us for herself agrees to accept the said sum of $101,600 in full and complete settlement of all accounts, claims, and demands between us and each of us and our said mother and guardian and in full satisfaction of all claims and demands of whatever character arising out of or connected with the administration of said estate or the said relation of guardian and ward, and each of us for herself authorizes and requests that upon presentation of this agreement and a receipt for the above amount, the court having jurisdiction thereof, will without further investigation of accounts, so far as they concern either of us, pass the final accounts of our mother as administratrix and guardian and by proper decree discharge those liable as bondsmen for her action in either capacity."

The complainant, Helen Patten, by allegation of the bill, accepts and adopts the said settlement as fully as if she had signed it, and claims equally with her sisters thereunder.

Mrs. Patten did not present this paper to the court in Nevada, but kept it among her papers until her death. Nor did she make any payment of the claims therein stated unless to the partial extent hereinafter mentioned.

Under the laws in force in this District, an executor cannot retain money in his hands to pay a debt due him by the estate, but must present the same and have it first passed in the orphans' court. Act of 1798, ch. 101, subch. 8, sec. 18. In obedience to this law, the complainants presented their claims May 10, 1889, to the special term, sitting as an orphans' court, and prayed their allowance. Augusta P. Glover appeared in opposition to this petition and set up substantially the same matters therein as in her answer to the bill. And thereupon the learned justice holding the said term passed the following order in said cause:

"The petition of Mary E. Patten, Josephine A. Patten, Edith Patten and Helen Patten, with the answer thereto of Augusta P. Glover, in pursuance of the rule to show cause, now came on to be heard and was argued by counsel and considered by the court, and it appearing to the court that the said petition presents a subject-matter within the jurisdiction of the court, but that the claims of the petitioners cannot be determined by this court without the determination of matters whereof this court has not jurisdiction, such as the effect upon the said claims of the will of the testatrix, the payment to respondent on account, as alleged and denied, and other matters, it may be, it is therefore ordered, adjudged and decreed this 13th day of June, 1889, that further action upon the said petition be, and the same is hereby, suspended until said other matters whereof this court has not jurisdiction shall be first tried and determined in the appropriate tribunal in such manner as counsel may advise."

After the passage of this order the present bill was filed to procure an adjudication of the matters not within the jurisdiction of the orphans' court.

It appears that in February, 1887, just before Mrs. Glover's marriage, her mother delivered to her United States bonds of the value of $102,800, which the complainants allege was on account of the indebtedness named in the instrument aforesaid. It appears also that Mrs. Patten made certain investments of money in loans payable to the complainants, amounting to the sum of $11,250 each, which they allege are to be credited on account of the said indebtedness. The personal estate of Mrs. Patten is probably not sufficient to satisfy this indebtedness and the legacies given in her will, though the value of the real estate is very much greater.

The defendants contend, (1) that the instrument of September, 1885, was not the statement of an account between Mrs. Patten and her children; that she never promised or became bound to pay the amounts therein stated, and that their only claim, if any, against her is such as may be shown to be due, upon a settlement of the estate of their father, as administered by her, which, they say, is barred by limitation. (2.) That the claim is barred also by the provision of the statute relating to estates of deceased persons because not

sued upon in nine months after refusal. (3.) The third and chief contention is, that the debts being less than the amount of the estate bequeathed to the daughters, to whom they are due, must be deemed to be satisfied thereby.

1. The first question that is presented for determination is preliminary. The evidence of Curtis J. Hillyer is objected to by
747 defendants because it consists of transactions and communications between him and Mrs. Patten under the relation of attorney and client. The witness said that he was an old friend of Mrs. Patten in California and Nevada, and that she frequently talked with him of her affairs in connection with her husband's estate, which were involved because she had never rendered any account to the court and had in fact never kept any regular account with her daughters and had no vouchers. She showed him a letter from her attorney in Nevada advising some settlement with the court, and at her request he corresponded with this attorney for a short time. He advised her to prepare as complete and fair a statement as she could. She did this and witness went over the whole with her carefully. They both agreed that it was about correct, and was a fair and liberal settlement. He advised her to explain it to her daughters, and have them to agree to it. She reported this as done, and he then drew up the instrument for the daughters to sign, and she informed him that they had signed it. The witness said that while he was a lawyer, he was not consulted by Mrs. Patten in that capacity at all, but simply as an old friend. It is evident also that the communications with Mrs. Patten were not intended to be confidential. We think the evidence is clearly competent. 1 Greenleaf on Ev., sec. 240.

2. Another preliminary question arises upon the objections made to the evidence of the several complainants concerning certain transactions with and declarations by Mrs. Patten concerning this indebtedness to her children on account of their interests in their father's estate. The testimony of each was to the effect that Mrs. Patten, a few days before the marriage of the defendant Augusta, delivered to her $80,000 in United States bonds, which were worth $102,800 in cash at the time, in payment of her claim under the instrument reciting the indebtedness to her children as aforesaid, that the delivery was made with a declaration to that effect. One of the complainants testified in addition that a few days before her sister's marriage, she (witness) went with her mother to the Treasury to withdraw the bonds. The mother had had a calculation made of the requisite amount of bonds, at their market value, to make the sum of about $100,600. The amount was something over $79,000, and witness advised her mother to make it even $80,000, to which she acceded. These witnesses all testified to the transaction, by which Mrs. Patten, shortly after this, made a loan of $45,000 to John E. Beall, taking the note in the names of the four complainants, for the purpose, as they say, of making a payment to them on account of the same indebtedness. The objection is based on the proviso to the statute making parties competent witnesses, "that in actions by or against executors, administrators and guardians, in which judg-

ment may be rendered for or against them, neither party shall be allowed to testify against the other as to any transaction with or statement by the testator, intestate or ward, unless called to testify thereto by the opposite party, or required to testify thereto by the court."

With respect to the $45,000 transaction and the declarations made concerning it, we think the objection well taken. These bear directly upon and support the issues made in the case upon the indebtedness of Mrs. Patten to them, her promise to pay the same, and also upon whether the bequest of the will was intended as an extinguishment of the indebtedness as against her estate. But in so far as the testimony relates to the transactions between Mrs. Patten and her daughter Augusta, and her declarations as to the object of her delivery of the bonds to her, we think the proviso does not apply. This is not subject-matter of the suit in which the estate is interested. If the estate were interested, its interest would lie in making this proof, as it would have the effect of extinguishing her debt, which if unpaid would be a valid claim against it. 1 Wharton Ev., sec. 468.

Without reviewing or attempting the analysis of the very many cases in which the effect of this proviso has been discussed in its application to the particular state of facts therein, we will content ourselves with quoting what seems a satisfactory statement of the true doctrine, in its application to the question as here presented: "The conflict must be really between the dead, whose mouth is closed, and the living, who is able to speak, in order to enable the statute to apply." 1 Wharton Ev., sec. 470.

3. The evidence shows plainly enough that Mrs. Patten, in good faith, calculated the items of indebtedness to her children, on account of their father's estate, as accurately as she could, and had the instrument executed by them in order to effect a complete settlement. They were her children; she had not married again, and was possessed of a large and growing fortune of her own. She had long before made a will in which her whole estate was bequeathed to these children, share and share alike, and they were unmarried and living with her. She was evidently a good business woman, and thought it best to manage the interests of her daughters while the foregoing conditions lasted. She did not, therefore, file it in the court in Nevada, but carefully preserved it. But we are not forced to indulge any presumption whatever with respect to her intention as to the effect of this settlement. The close calculation that she had made by a banker of the amount of bonds sufficient at the market rate to equal the principal sum due to her daughter Augusta, and the prompt delivery thereof to her on the eve of her marriage, together with her action in setting aside the Beall loan of $45,000 to the four others; and her declaration of purpose in so doing, furnished convincing evidence of her recognition of the binding effect of the settlement upon herself as well as upon them. Mr. Beall testified that when the loan was made to him, she directed that the note be made payable to the four complainants, saying that the money was "advanced to them out of the fund belonging to them

out of their father's estate." She said she wanted the interest payable quarterly, so that they might have some separate income as "pin money." She said it was part of the sum due them, and that she had made certain advances to Mrs. Glover. Beall inquired if she wanted the notes made payable to the five sisters, and
748 Mrs. Patten replied, No; that Mrs. Glover had received her portion. This express recognition of the debt and the partial payments made upon it effectually dispose of the defense of limitations. Cooper *v.* Olcott, Ct. of App., D. C., 21 Wash. Law Rep., 616.

4. The statute of Maryland of 1798, concerning estates, which provides that the claim of a creditor shall be barred unless suit is brought within nine months after the claim shall have been exhibited against an executor or administrator and rejected by him, is in force in this District, but has no application to the facts of this case. Ch. 101, subch. 8, sec. 18. This statute refers only to claims which could be exhibited against the executor. The common law allowed an executor to retain money in payment of his claims against the estate in his hands. Sec. 19 of the foregoing act took this right away and provided not for exhibition to any one, but for the passage of such claims by the orphans' court, in which the claims of complainants are now pending. Moreover, this statute only operates after a claim has been duly exhibited and rejected, which is not the situation here. Coburn *v.* Harris, 53 Md., 352.

5. We cannot hold that the provision for complainants in the will of their mother is a satisfaction of the debt due them. This is not the case of a legacy to one who otherwise could take no interest; but of a general bequest, "share and share alike," to those who are the natural objects of the testator's bounty, and who would inherit the whole estate, in like manner, if no will had been made. Again, this will was made six years before the indebtedness was liquidated by the instrument of September, 1885, and contains no word of reference thereto. These considerations are sufficient to take the case out of the presumption which it is conceded the courts at an early period attached to the bequest of a legacy to a creditor where there was nothing on the face of the will to indicate a contrary intention. This rule of construction, though generally conceded to exist, has never met with favor. Mr. Pomeroy says of it: "This general rule being based upon artificial reasoning, has been distinctly condemned by able judges. It is not favored by courts of equity; on the contrary, they lean strongly against the presumption, will apply it only in cases which fall exactly within the rule, and will never enlarge its operation." 1 Pom. Eq. Jur., sec. 527. He further says that they will take hold of very slight circumstances to remove a case from the operation of the rule, and adds, what is amply sustained by an examination of the reported cases, "In fact, the discussion of the general doctrine chiefly consists in the statement and description of those facts and circumstances which prevent its application." *Id.*, sec. 528.

In a case not unlike this, the court of appeals of Virginia said: "There is no doubt the rule still nominally exists; but the tendency of the more recent decisions is to consider the bequest a bounty and

not the discharge of an obligation. And the courts now lay hold of any circumstances, however trifling, for the purpose of repelling the presumption that the legacy was intended as a satisfaction of the debt." Crouch *v.* Davis, 23 Grattan, 62, 93.

In a well-considered case in Mississippi, it was also said: "Inasmuch as the presumption is arbitrary and often in conflict with the real motives and wishes of the testator, and seemingly harsh, courts have been prompt to seize upon every circumstance to counteract and overcome it." Gilliam *v.* Brown. 43 Miss., 641. See also Spencer *v.* Spencer, 4 Md. Ch., 456; Edelin *v.* Dent, 2 Gill & J., 185; Owings *v.* Owings, 1 H. & G., 484; Partridge *v.* Partridge, 2 H. & J., 63; Van Repen *v.* Van Repen, 2 N. J. Eq., 1; Heisler *v.* Sharp, 44 *id.*, 167; Eaton *v.* Benton, 2 Hill, 576; Horner *v.* McGaughy, 62 Pa. St., 189; Reynolds *v.* Robinson, 82 N. Y., 108; 1 Redf. Wills, (4th ed.), 540; Notes to Chancy's case, 2 White & Tudor's L. C. Eq., p. 821 *et seq.*

The testimony in this case of the acknowledgment of the existence of the debts and the payments made to Mrs. Glover and the complainants on account thereof, long after the will had been made, if admissible for that purpose, would completely overturn any presumption of satisfaction, even if there were no intrinsic circumstances upon which the same might be done. The admissibility of evidence of the acts and declarations of a testator after the execution of the will, when there is no expression therein with respect to the matter, not to explain the will, but to rebut a presumption of law, is supported by very weighty authority. 1 Redf. Wills (4th ed.), 540; Plunkett *v.* Lewis, 3 Hare, 316; Chancy's case, 2 White & Tudor's L. C. Eq., p. 781, and p. 808 *et seq.*

6. In order to determine the effect of the delivery of the bonds to Mrs. Glover, a few days before her marriage, it may be proper here to add, what might have been said in connection with the discussion of the question raised on the competency of the evidence in Mrs. Patten's declaration of her purpose in so doing. If no evidence whatever had been given to show that the delivery of the bonds was intended as a payment upon the debt instead of a gift to Mrs. Glover, the presumption would lie that it was so intended.

"It is settled by the uniform current of decision in England that when a father or other person *in loco parentis*, being a debtor to his child by any kind of ordinary indebtedness, makes an advancement to the child upon marriage, or upon any other occasion, that advancement is presumed to be a satisfaction, or a satisfaction *pro tanto*, of the debt. In order that the provision may operate as a satisfaction, it is not necessary that it should be made on the marriage of a child, or should be expressly in the nature of a portion." 1 Pom. Eq. Jur., sec. 540; Plunkett *v.* Lewis, 3Hare, 316.

7. Upon consideration of the whole case, we are of the opinion that the complainants are entitled to the relief prayed for, and the cause will be remanded to the supreme court of the District of Columbia, where a decree will be passed giving the same in accordance with this opinion.

(Endorsed:) Mary E. Patten *et als. vs.* Augusta P. Glover *et al.* Opinion. Court of Appeals. District of Columbia. Filed Nov. 8, 1893. Robert Willett, clerk.

749 Court of Appeals of the District of Columbia, November Term, 1893.

MARY E. PATTEN *et al.*, Complainants,
vs.
AUGUSTA P. GLOVER *et al.* } No. 94. No. 12234. Equity.

Transferred from the supreme court of the District of Columbia pursuant to act of Congress of February 9th, 1893.

This cause came on to be heard on the record from the supreme court of the District of Columbia, and was argued by counsel.

On consideration whereof it is now here ordered, adjudged, and decreed by this court that the complainants are entitled to the relief prayed for, and that this cause be, and the same is hereby, remanded to the said supreme court, with directions to enter a decree in conformity with the opinion of this court.

Per Mr. JUSTICE SHEPARD.

November 8, 1893.

(Endorsed:) Court of Appeals of the District of Columbia. No. 94. November term, 1893. Decree. Court of Appeals, District of Columbia. Filed Nov. 8, 1893. Robert Willett, clerk.

750 In the Court of Appeals, District of Columbia.

MARY E. PATTEN & Others, Complainants,
vs.
AUGUSTA P. GLOVER and Another, Def'ts. } No. 94.

And now come the defendants, by John Goode, their attorney, and pray the court to allow an appeal from the decree rendered herein on the 8th day of November, 1893.

JOHN GOODE, *Att'y.*

Allowed.

R. H. ALVEY, *Ch. Justice.*

(Endorsed:) Court of Appeals of the District of Columbia. No. 94. Mary E. Patten *et al. vs.* Augusta P. Glover *et al.* Petition for allowance of appeal to Sup. Ct. U. S. and order allowing same. Court of Appeals, District of Columbia. Filed Jan. 8, 1894. Robert Willett, clerk.

751 Know all men by these presents that we, Augusta P. Glover and John M. Glover, as principals, and —— ——, as sureties, are held and firmly bound unto Mary E. Patten, Josephine Patten, Edith Patten, and Helen Patten in the full and just sum of five hundred dollars, to be paid to the said Mary E. Patten, Josephine

Patten, Edith Patten, and Helen Patten, their certain attorneys, executors, administrators, or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents.

Sealed with our seals and dated this 12th day of February, in the year of our Lord one thousand eight hundred and ninety-four.

Whereas lately, at a term of the Court of Appeals of the District of Columbia, in a suit depending in said court between the said Mary E. Patten, Josephine A. Patten, Edith Patten, and Helen Patten, plaintiffs, and the said Augusta P. Glover and John M. Glover, defendant-, a decree was rendered against the said Augusta P. Glover and John M. Glover, and the said Augusta P. Glover and John M. Glover having obtained an appeal in open court to reverse the decree in the aforesaid suit, and a citation directed to the said Mary E. Patten, Josephine Patten, Edith Patten, and Helen Patten, citing and admonishing them to be and appear at a Supreme Court of the United States, to be holden at Washington, within thirty days from the date hereof:

Now, the condition of the above obligation is such that if
752 the said Augusta P. Glover and John M. Glover shall prosecute their said appeal to effect and answer costs if they fail to make their plea good, then the above obligation to be void; else to remain in full force and virtue.

Sealed and delivered in presence of—

AUGUSTA P. GLOVER. [SEAL.]
JOHN M. GLOVER. [SEAL.]
J. SPRIGG POOLE. [SEAL.]

Approved by—
R. H. ALVEY, *Ch. Justice.*

(Endorsed:) No. 94. Court of Appeals of the District of Columbia. Patten *et al. vs.* Glover *et al.* Bond on appeal to Supreme Court of the United States. Court of Appeals, District of Columbia. Filed Feb. 12, 1894. Robert Willett, clerk.

753 Court of Appeals of the District of Columbia.

I, Robert Willett, clerk of the Court of Appeals of the District of Columbia, do hereby certify that the foregoing pages, numbered from one to seven hundred and fifty-two, contain a true transcript of the record and all proceedings had in said Court of Appeals in the case of Mary E. Patten *et al.*, complainants, *vs.* Augusta P. Glover *et al.*, No. 94, November term, 1893, as the same remain upon the files and records of said Court of Appeals.

Seal Court of Appeals, District of Columbia.

In testimony whereof I, Robert Willett, clerk of said court, have hereunto set my name and affixed the seal of said court, at the city of Washington, this third day of March, A. D. 1894.

ROBERT WILLETT,
Clerk of the Court of Appeals of the District of Columbia.

754 UNITED STATES OF AMERICA, *ss:*

To Mary E. Patten, Josephine A. Patten, Edith Patten, and Helen Patten, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, at Washington, within thirty days from the date hereof, pursuant to an appeal filed in the clerk's office of the Court of Appeals of the District of Columbia, wherein Augusta P. Glover and John M. Glover are appellants and you are appellees, to show cause, if any there be, why the decree rendered against the said appellants, as in the said appeal mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Richard H. Alvey, Chief Justice of the Court of Appeals of the District of Columbia, this 12th day of February, in the year of our Lord one thousand eight hundred and ninety-four.

R. H. ALVEY, *Ch. Justice.*

Service acknowledged this 12th day of February, A. D. 1894.

HENRY E. DAVIS,
Solicitor for the Above-named Appellees.

755 [Endorsed:] No. 94. Court of Appeals, District of Columbia. Patten *et al. vs.* Glover *et al.* Citation and acknowledgement of service. Court of Appeals, District of Columbia. Filed Feb. 12, 1894. Robert Willett, clerk.

756 MARY E. PATTEN *et al.*
vs.
AUGUSTA P. GLOVER *et al.*

Assignment of Errors.

1. The court below erred in admitting the testimony of Curtis J. Hillyer because it related to transactions and communications between him and Mrs. Patten while the relation of attorney and client existed between them.

2. The court below erred in admitting the evidence of the complainants concerning certain transactions with and declarations made by Mrs. Patten as to the indebtedness to her children on account of their interest in their father's estate.

3. The court below erred in holding that the statute of Maryland of 1798 concerning estates, which provides that the claim of a creditor shall be barred unless suit is brought within nine (9) months after the claim shall have been exhibited against an executor or administrator and rejected by him, has no application to the facts of this case.

4. The court below erred in not holding that the provision for the complainants in the will of their mother is a satisfaction of the debt due them.

757 5. The court below erred in holding that the delivery of the bonds to Mrs. Glover a few days before her marriage was intended as a payment by Mrs. Patten upon her indebtedness instead of a gift to Mrs. Glover.

6. The court below erred in deciding upon the whole case that the complainants are entitled to the relief prayed for and in remanding the cause with directions to pass a decree in their favor.

Endorsed on cover: Case No. 15,527. District of Columbia Court of Appeals. Term No., 78. Augusta P. Glover and John M. Glover, appellants, *vs.* Mary E. Patten, Josephine A. Patten, Edith Patten, and Helen Patten. Filed March 12th, 1894.

165-394

Office Supreme Court, U. S.
FILED
NOV 27 1896
JAMES H. McKENNEY,
CLERK

165-394

IN THE

Supreme Court of the United States,

OCTOBER TERM, 1896. No. 78.

AUGUSTA P. GLOVER, ET AL.

vs.

MARY E. PATTEN, ET AL.,

BRIEF FOR APPELLANTS.

CHARLES J. BONAPARTE,
Counsel for Appellants.

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Counsel for Appellants.

[The following, which has been inadvertently omitted, is to be inserted on page 6, immediately before the paragraph commencing "Before discussing."]

ASSIGNMENT OF ERRORS.

The following errors in the action of the Court of Appeals of the District of Columbia will be relied upon in argument in this Court, being, with one exception, those set forth on page 399 of the Record, but here stated in a different order and in somewhat different language.

1st. That the Court of Appeals erred in holding the complainants entitled to the relief prayed for, because,

(1.) The appellee, Helen Patten, was improperly joined as a party complainant to the bill;

(2.) There is a non-joinder of necessary parties defendant;

(3.) The bill discloses no good cause of action;

(4.) The cause of action set up by the Bill is barred by limitations;

(5.) The case of the appellees depends upon the testimony of incompetent witnesses and upon evidence otherwise inadmissible, in that:

(*A.*) The witness Hillyer, was incompetent to testify as to his oral and written communications with the late Mrs. Patten, preceding the transaction of September, 1885;

(*B.*) The complainants were incompetent to testify as to their mother's alleged statements and as to transactions in which she took part;

(*C.*) The evidence of admissions or other statements by the appellant, Augusta, before she obtained letters, were inadmissible, she not being a party to the cause as an individual.

(6.) Upon the whole of the evidence contained in the Record the appellees are shown not to be entitled to the relief which they have prayed, or to any relief obtainable under the pleadings.

2d. That the Court of Appeals should have held the provision for the complainants in their mother's will a satisfaction of the debts alleged to have been due them by her.

3d. That the Court of Appeals should not have found the delivery of bonds to the appellant, Augusta, constituted a payment of the debt alleged to be due her, as this fact was not in issue under the amended bill.

The third of the errors assigned on page 399 of the Record, will not be pressed upon the attention of this Court.

IN THE

Supreme Court of the United States,

OCTOBER TERM, 1896. No. 78.

AUGUSTA P. GLOVER, ET AL.

vs.

MARY E. PATTEN, ET AL.,

BRIEF FOR APPELLANTS.

Notwithstanding the length of the Record, the material facts of this case are susceptible of comparatively brief statement.

The appellants are the son-in-law and one of the five daughters of the late Mrs. Anastasia (widow of Edmund,) Patten; the appellees are the remaining four daughters. A few days before Mrs. Glover's marriage, in February, 1887, (Record, page 147,) her mother gave her United States bonds to the face value of $80,000. After the death of Mrs. Patten, on September 11th, 1888, no will could be found, except one executed in San Francisco on December 23d, 1879, whereby, after the payment of legacies to the amount of $45,000, all her property was left to be equally divided among her five daughters, who were likewise all appointed executrices, (Record, pages 6 and 7. To this will there were but two witnesses,

although, when Mrs. Patten died, the bulk of her property had been invested in real estate in the District of Columbia. Soon afterwards a controversy arose as to whether Mrs. Glover's distributive share of the estate should be charged with the bonds given her before marriage, one of the appellees announcing that "they would never submit to Gussie's" (Mrs. Glover's) "getting $100,000 more than they did," (Record, pages 11, 41, 3, 12.) It would seem that Mrs. Glover was willing that these bonds should be charged against her share, and communicated this disposition to Honorable Wm. M. Stewart then representing her sisters (Record, pages 315, to 317,) but the appellees appear to have made no response to these advances; and, on May 10th, 1889, they filed, as executrices, a petition to the Special Term of the Supreme Court of the District, sitting as an Orphans' Court, in accordance with the Maryland Act of 1798, ch. 101, sub-ch. 8, sec. 18, claiming to be creditors of the estate. (Record, pages 352 to 355.) The appellant, Augusta, as their co-executrix, resisted the allowance of the claims thus presented (Record, pages 355 to 359,) and on June 13th, 1889, the following order was passed by the Court:

"In the Supreme Court of the District of Columbia, Sitting In Probate.

In the matter of the estate of Anistasia Patten, deceased.

No. 3234.

The petition of Mary E. Patten, Josephine A. Patten, Edith Patten and Helen Patten, with the answer thereto of Augusta P. Glover, in pursuance of the rule to show cause, now came on to be heard and was argued by counsel and considered by the Court, and it appearing to the Court that the said petition presents a subject matter within the jurisdiction of the Court, but that the claims of the petitioners cannot be determined by this Court without the determination of matters whereof this Court has not jurisdiction, such as the effect upon the said

claims of the will of the testatrix, the payment to respondent on account as alleged and denied, and other matters, it may be; it is therefore ordered, adjudged and decreed, this 13th of June, 1889, that further action upon the said petition be, and the same is hereby suspended, until said other matters whereof this Court has not jurisdiction, shall be first tried and determined in the appropriate tribunal in such manner as counsel may advise.

W. S. Cox, J."

Thereupon, on January 8th, 1890, the appellees filed the original bill in this cause, which was followed by a variety of answers, cross-bills, motions, demurrers, amendments to pleadings and other proceedings set forth on pp. 1 to 65 of the Record, and subsequently a considerable mass of oral and documentary evidence was taken and returned (Record pp. 65 to 386.) The cause having been transferred to the Court of Appeals of the District in pursuance of the Act of Congress approved February 9th, 1893, the Court, on November 8th, 1893, passed the following decree:

"*Court of Appeals of the District of Columbia.*

November Term, 1893.

MARY E. PATTEN, ET AL., *Complainants.*
vs.
AUGUSTA P. GLOVER, ET AL. } No. 94. No. 12234. Equity.

Transferred from the Supreme Court of the District of Columbia pursuant to Act of Congress of February 9th 1893. This cause came on to be heard on the Record from the Supreme Court of the District of Columbia, and was argued by counsel. On consideration whereof it is now here ordered, adjudged and decreed by this Court that the complainants are entitled to the relief prayed for, and that this cause be, and the same is hereby remanded to the said Supreme Court, with directions to enter a decree in conformity with the opinion of this Court.

Per MR. JUSTICE SHEPHARD."

From this decree the present appeal was prayed and allowed.

The claim of the appellees to be considered as creditors of their mother's estate is founded upon the undisputed facts that she was administratrix of that of her husband and guardian for each of her five daughters, that she qualified in these several capacities and received the entire estate of their father, to one-half whereof she was entitled as his widow, the other half going, under the laws of Nevada, of which State he died a citizen, to his five daughters, but that she never made any distribution of his property or passed any final account as administratrix or any account whatever as guardian, but retained the entire estate, and from time to time reinvested portions of it, always (with a single exception, to be hereafter noted) in her own name; and that in September, 1895, she caused the paper which re-appears so frequently in the Record, to be prepared by one Curtis J. Hillyer and signed by three of the appellees and the appellant Augusta. This paper reads as follows:

"Whereas, our mother, Anastasia Patten, as guardian for us, received in the years 1873, '74, '75, certain amounts of money, being our portion of the inheritance of the estate of our deceased father; and,

Whereas, no special separate investments of the money so received have been made by our said guardian, but the same has been by her kept and safely invested in connection with monies belonging to her in her own right derived from the said estate; and,

Whereas, our said guardian has, up to the present date, had entire charge of our maintenance and education, and has during the past thirteen years incurred a large amount of family expenses for our benefit, of which expenses no account has been kept by her; and,

Whereas, we and our said guardian are now desirous of settling the account between us in a just and equitable manner without attempting to secure technical accuracy in such settlement; and,

Whereas, our said mother and guardian has submitted to us for inspection all accounts and papers in her possession touching or relating to the receipts and disburse-

ments entering into such accounting, and we have personally, general knowledge concerning the family expenses during said period; and,

Whereas, from such examination and knowledge we believe that by a payment to each of us by our guardian of the sum of $101,600 an equitable settlement will be made and full justice done to each of us:

Now, therefore, each of us for herself agrees to accept the said sum of $101,600 in full and complete settlement of all accounts, claims and demands between us and each of us and our said mother and guardian and in full satisfaction of all claims and demands of whatever character arising out of or connected with the administration of said estate or the said relation of guardian and ward, and each of us for herself authorizes and requests that upon presentation of this agreement and a receipt for the above amount, the Court having jurisdiction thereof will without further investigation of accounts, so far as they concern either of us, pass the final accounts of our mother as administratrix and guardian, and by proper decree discharge those liable as bondsmen for her action in either capacity.

(Signed,) MARY ELLEN PATTEN,
KATHARINE AUGUSTA PATTEN,
JOSEPHINE ANTOINETTE PATTEN,
EDITH PATTEN."

The appellees contend that by the execution of this paper on the part of its four subscribers, at the request of their mother, she became indebted to each of them, *as of its date*, in the sum of $101,600 in cash, that the United States bonds, shown to have been worth in market about $102,800 in February, 1887, were given to Augusta as a payment on account of this debt, and that each of the other three is entitled to the sum named, *with legal interest from September, 1885*, subject to a credit, by reason of an alleged payment on account, of $11,250 made in each case on October 15, 1887. The appellee Helen, who was a minor in September, 1885, avers in the bill, (Record, page 33,) that she:

"Being fully advised in the premises, now adopts and accepts said adjustment, settlement and determin-

ation aforesaid, as though she had duly participated in the same at the time of the making thereof"—

and claims the like amount subject to the like credit. The alleged payment of $11,250 said to have been made on account of their respective claims to each of the four appellees, consisted in Mrs. Patten's causing the notes and deed of trust given by a man named Beall to secure a loan of $45,000, which she made him on October 15, 1887, to be drawn for the benefit of her four unmarried daughters jointly.

Before discussing the evidence contained in the Record, it may be well to call the Court's attention to certain reasons requiring, it is respectfully submitted, that the decree of the Court of Appeals in this cause should he reversed, without regard to the merits.

1. Helen Patten is improperly joined as complainant.

The Bill, (Record, pages 32, 33,) states that Mrs. Patten and four other persons, of whom Helen Patten was not one, entered into an agreement in September, 1885, which is set out in the pleading, and thereby created *inter sese* the relation of debtor and creditors; but Helen had nothing to do with this agreement. She did not sign it, nor did anyone professing to represent her; in fact, she was not a party to it in any way; although the bill says that she now ratifies and adopts it "as though she had duly participated in the same at the time of the making thereof." It would seem obvious, upon this statement of the pleadings, that she should not have been joined as a complainant; if she has an equity, it is a totally different equity from that relied upon by the other complainants.

The learned Judge who delivered the opinion of the lower Court seeks apparently to connect Helen Patten with the agreement of September, 1885, by saying, (Record, page 394,) that, "the action of Mrs. Patten in

setting aside the Beall loan of $45,000 to the four complainants, and her declaration of purpose in so doing, furnished convincing evidence of her recognition of the binding effect of the settlement upon herself as well as upon them." But surely it is a cardinal principle of Equity, no less than of Law, that a judgment must be founded upon facts which are *both pleaded* and proven.

The appellants contend that the learned Judge has altogether misapprehended the effect of the testimony respecting the transaction with Beall; this point is discussed *infra;* but, even if this testimony could be held to sustain his statement, still, as the pleadings distinctly aver that Helen was no party to the transaction upon which alone the rights of the other complainants are based and alleged to depend, it would seem that the bill must be dismissed as to Helen. When she became of age in 1889, the state of accounts between her guardian and herself may well have become entirely different from what it would have been had she attained her majority in 1885.

2. There is a non-joinder of necessary parties defendant. The complainants come into Equity as executrices, (*i. e.*, trustees,) claiming adversely to the estate of their testatrix, (*i. e.*, to *all* of their *cetteux que trustent.*) It appears by the exhibit filed with the bill and prayed to be taken as part thereof, (Record, page 31,) that among these *cetteux que trustent* are three legatees interested in the estate to the extent of $45,000, (Record, page 37); it is not averred that these legacies have been paid, or that they can be paid in full out of the personal estate if the alleged claims of the complainants and those of other creditors are satisfied, the only averment being that the said estate "exceeds in amount the sum of $500,000," (Record, page 31,) whilst the claims of the complainants, on their own theory, when the Bill was filed, exceeded in the aggregate $471,000. It appears

on the face of the Bill that these legatees are entitled to their day in Court.

3. The bill discloses no good cause of action.

The equity set up by the bill is simply the absence of a legal remedy to enforce a legal right. The appellees disclaim *totidem verbis* any rights arising from fiduciary relations between the parties to the suit, averring that "there can arise and be determined in the premises no question of trust or liability or obligation growing out of any supposed relation of trust." (Record, page 36.) Their case is that their testatrix, by causing three of them and the appellant, Augusta, to execute the paper of September, 1885, became debtor to each of her five daughters in an ascertained sum, payable on demand, and bearing interest until paid. We have shown that as to Helen, there is not a shadow of foundation for this contention, upon any conceivable construction which may be given to the averments of the bill; but this, although less obvious, is no less true regarding the other three appellees. The paper which they executed in September, 1885, contains an agreement *by each of its signers* to accept the sum of $101,600 "in full and complete settlement of all accounts, claims and demands between us and each of us and our said mother and guardian, and in full satisfaction of all claims and demands of whatever character arising out of or connected with the administration of said estate or the said relation of guardian and ward." (Record, page 32.) It contains the further statement that *its signers* believed "that by a payment to each of us by our said guardian, of the sum of $101,600 an equitable settlement will be made, and full justice done *to each of us*," (Ibid.); and it goes on to say that each of the signers "*for herself* authorizes and requests that upon presentation of this agreement, and a receipt for the above amount, the Court having jurisdiction thereof will, without further investigation of accounts, so far as they concern either of us,

pass the final accounts of our mother as administratrix and guardian, and by proper decree discharge those liable as bondsmen for her action in either capacity," (Record, page 33); but *there is no agreement by Mrs. Patten to pay the sum named, or any sum whatsoever to any one.* The paper constituted a *mere offer* on the part of each of the wards to receive a specified sum in satisfaction of her claim against her guardian. There was no consideration for the agreement to accept this sum, and unquestionably a *locus penitentiae* existed for each of the signers until the offer was accepted and the money paid; for it will scarcely be disputed that, if one of the debtors had discovered or been led, for any reason, to believe that a larger sum was due her than the amount mentioned, she could at any time, before her mother availed herself of the option thus given her, withdraw the privilege and claim the account to which she would have been otherwise entitled. The paper relied upon by the appellees, as set forth in the bill, is therefore *no completed contract*; it shows no *irrevocable promise* by any of them; *no promise at all* on the part of their mother; and, since the bill says that the agreement upon which the complainants rely, "was duly signed and executed by the complainants and the said defendant, except said complainant Helen, and is in the words and figures following," (Record, page 32,) setting forth the paper hereinbefore discussed, and thus excluding the possibility that the alleged agreement might have been partly verbal and partly in writing, and restricting their ground of action to the instrument set out in the bill, it is respectfully submitted that, treating the bill as a declaration in a suit at law, it would have been demurrable. The only right, however, which the complainants have to come into equity arises from the fact that, being executrices, they cannot sue themselves, and therefore cannot recover by an action at law the debt due them by their testatrix. If the bill fails to show that they could have sued their testatrix in assumpsit or debt during her life time, or

could now thus sue her executor, were this someone else than themselves, they have no better standing in equity than they would have at law.

4. The cause of action set up by the bill is barred by limitations.

It is asserted that the alleged contract was executed on "the * * * day of September, A. D., 1885." (Record, page 32.) Mrs. Patten died on September 11th, 1888. (Record, page 31.) Applying the rule that a pleading shall be construed against the pleader, "the * * * day of September" would here stand for September 1st, and three years and ten days would have elapsed between the execution of the paper and the death of the testatrix.

If, however, this rule be not here conclusive, and we may resort to the evidence to ascertain the exact day on which the paper was signed, nothing will be found in the Record to shed any light on this question, except the letter from the witness Hillyer to Mrs. Patten, given on page 74 of the Record. This bears date September 8th, 1885, and, if it was immediately acted upon, which, although not stated distinctly, is indicated by the testimony, the statute had unquestionably run against these claims before the death of the testatrix.

It is true that the bill charges, and the lower Court appears to have found, that a payment was made on account of the debt to each of the appellees on October 15th, 1887, but it is respectfully submitted, that for this averment and finding there is no support whatever in the proof. The Court of Appeals recognized the incompetency of the complainants to testify regarding these alleged payments on account by the deceased, and it would seem to be really too clear for argument from the very words of the statute. (Record, p. 394.) There is left, therefore, in the Record, on this point, only the testimony of the witnesses Beall and Snyder. The latter says: "After John Beall left the room, she" (Mrs. Patten,) "asked me if I did not consider this a good loan. I told

her, yes; and then she said to me that it was some money she wanted *to give* these four girls for pin money, to give them a sense of independence; that they might have some income that they could do as they pleased with, without any supervision from herself; and further, *that she had already provided for* the other daughter, the married daughter, quite liberally, and she thought she ought *to give* these girls something. That is about the substance of it." It is surely needless to argue that this language was utterly inappropriate if used regarding a payment on account of an acknowledged debt. (Record, page 86.) The witness Beall says, (Record, page 103:) "She" (Mrs. Patten,) "said that the money was *advanced* to them," (the appellees,) "out of the fund belonging to them out of their father's estate, and that she wished them to have the income of that amount of money * * She used the words 'pin money', and further declared that she had never made them any allowance, and she wished them to have for themselves, every three months, the interest of this money to spend for themselves." The same witness says further: "It was for money belonging to the four girls from the proceeds of their father's estate which had never been divided * * * She said that $45,000 was *being distributed* in this manner to the four girls as a part of what was coming to them from their father's estate, and *she said she had made advancees* to Mrs. Glover." Several of the questions propounded to this witness in this connection were excepted to as leading, and it is respectfully submitted that the exception was well founded: but, conceding that the answers are properly before the Court, not only is there nothing in them which could be construed as the admission of a liquidated indebtedness on the part of the testatrix to her daughters, but her language, as given by the witness, seems altogether inconsistent with the existence of such a relation.

5. The case of the appellees depends upon the testimony of incompetent witnesses and upon evidence otherwise inadmissible.

It will not be claimed that the testimony of the witnesses C. C. Glover, Snyder, Perry, Beall, Flather and Stewart, together with the exhibits verified by these witnesses, would make out a sufficient case for the complainants upon any theory as to their rights; nor will it be seriously contended that the evidence of the complainants themselves, and of the witness C. J. Hillyer, would be sufficient for this purpose, in so far as they testify regarding matters other than transactions with the testatrix or with the appellee Augusta, before she became executrix. It is further respectfully submitted:

(*A.*) That the evidence of the witness, C. J. Hillyer, as to his oral and written communications with the late Mrs. Patten, in September, 1885, should be excluded from the consideration of the Court, since he was incompetent to testify regarding them;

(*B.*) That the testimony of the complainants as to their mother's alleged statements to them, and the transactions to which she was a party, whether in or out of the alleged presence of the appellant Augusta, should be excluded from the consideration of the Court, since they also were incompetent to testify regarding these matters;

(*C.*) That the testimony of any of the witnesses respecting the alleged admissions or other statements made by the appellant Augusta before she became executrix, whether made before or after her mother's death, should be excluded from the consideration of the Court, because this testimony was immaterial.

(*A.*) The witness Hillyer testifies regarding Mrs. Patten's husband (Record, page 81): "I was his attorney

for a good many years in all the law business he ever had." After Mr. Patten's death, his widow employed as her counsel in Nevada, a Mr. W. E. F. Deal, at one time a clerk in this witness' office, and afterwards for many years, his partner (Record, page 72), the witness himself having in the meantime removed to Washington. Prior to the execution of the paper of September, 1885, Mrs. Patten "had gone frequently up to Washington to see Judge Hillyer on business." (Testimony of Josephine A. Patten, Record, page 145.) "She was very busy going to Washington to consult with Mr. Hillyer." (Testimony of Mary E. Patten, Record, page 230). The subject matter of these consultations was the settlement of Mrs. Patten's accounts as administratrix of her husband and guardian for her children, and the exoneration from responsibility of the sureties on her bonds. She also consulted by letter her counsel in Nevada, Hillyer's former partner, but her action, according to the evidence in the Record, was determined by the advice of Hillyer himself, whose views differed from those of his late associate. It is submitted that in a suit against her estate, Hillyer was an incompetent witness to testify, regarding any statements or transactions to which Mrs. Patten was a party, occurring between him and herself while he was thus acting as her adviser, and that his letters to her and those of her counsel in Nevada, whether addressed to her or to him, if relating to her business, were also inadmissible in evidence.

It may be conceded, that there is some *real* and a much greater *apparent* conflict in the authorities on this question, but it is submitted with confidence that, whenever the purpose of the applicant is *to obtain the advice of a lawyer*, whatever may subsequently transpire between the lawyer consulted and the applicant, is privileged from disclosure unless at the instance or with the consent of the latter.

It is immaterial that no fee may be paid or intended to be paid. In the case of Bowers vs. Briggs, 20 Indiana 139, two of the defendants in a pending suit, consulted *the plaintiff's attorney* as to whether it would be to their interest to permit a judgment by default, and it was held that statements made by them during such consultation were privileged from disclosure.

So in the case of Bacon vs. Frisbie, 80 N. Y. 394:

"A practicing attorney also carried on a liquor store. R, one of his clients, called on him there, and in presence of several others put a supposed case to him, and asked him, if such a case existed, would there be any liability? The attorney gave his opinion, and asked if the case put was a certain real transaction, and R said it was. No such case was then pending. R paid no fee, there was no general retainer, and the attorney was never engaged in the real case. The supposed case afterward arising, the attorney testified on the trial to the interview, and that he did not consider that R was advising with him as counsel at that time. Held, improper."

In the language of Learned, P. J., in the Supreme Court in this case, (15 Hun. 28,) "the object of the rule is evidently to enable persons to obtain legal advice on a free and full statement of facts without the risk that the statement will be made evidence against them, and to effect that object it is necessary that every statement should be privileged which is made to an attorney or counsellor, for the purpose, on the part of the client, of getting advice as to the law on the facts stated; *the motive* of the party who makes the statement and *the character* of the party who hears it, make it privileged."

See also—

Andrews vs. Simms, 33 Ark. 771.
Read vs. Smith, 2 Ind. 160.
Foster vs. Hall, 12 Pick. 89.
Bean vs. Quimby, 5 N. H. 94.
Cross vs. Riggins, 50 Mo. 335.
Wade vs. Ridley, 87 Me. 368.
Alexander vs. United States, 138 U. S. 353, page 388.

The learned Judge who delivered the opinion of the Court of Appeals refers to 1 Greenleaf on Evidence, section 240. It is impossible to perceive how this authority can sustain the decision of the Court upon the present question. The author says:

"This protection extends to every communication which the client makes to his legal adviser for the purpose of professional advice or aid upon the subject of his rights and liabilities; nor is it necessary that any judicial proceeding in particular should have been commenced or contemplated. It is enough if the matter in hand, like every other human transaction, may possibly become the subject of judicial enquiry."

It would be difficult to find a more explicit statement of the reasons which require that this evidence should be excluded. The further statement of the learned Judge that: "It is evident that the communications with Mrs. Patten were not intended to be confidential," (Record, page 339,) is justified by nothing in the evidence, and opposed to the well recognized presumption that all communications made to a professional adviser are to be held confidential, no injunction of secrecy is needful in such cases to give them this character.

Weeks on Attorneys, § 149.
McLellan vs. Longfellow, 32 Me. 394.

(*B.*) The Court of Appeals held, that the complainants were incompetent to testify, respecting their mother's words or actions in regard to her investment of $45,000 in the loan to Beall, and that they were competent to testify regarding her statements and actions when delivering the bonds representing $102,800 to the appellant Augusta. It is very confidently submitted, that this ruling was perfectly correct as to the first, and altogether erroneous as to the second point; but the Court seems not to have decided at all the most important question arising in connection with the testimony of he complainants, namely, their competency to testify, regarding what passed between their mother and them-

selves at the time of the execution of the paper, bearing date September, 1885. What is then alleged to have occurred appears in the Record altogether from the evidence of the witness Hillyer and of the complainants; outside of their testimony, there is not a *scintilla* of proof in the case respecting this vital point, and, whilst the Court did not pass on the complainants' competency, it is evident from the language of the opinion that their testimony influenced the decision (Record, page 394). The incompetency of the complainants to testify regarding what passed between their deceased mother and themselves at the time when they and the appellant Augusta executed the paper upon which this suit is brought, seems so obvious upon the very language of the statute and from a consideration of the mischief the latter was designed to meet, that a citation of authorities on the subject seems altogether superfluous. It is sufficient to point out that, in this case, "the conflict" *is* "really between the dead, whose mouth is closed, and the living, who is able to speak," (1 Wharton on Evidence, section 470, quoted by the Court of Appeals, Record, page 394,) and there is far more evident reason for the application of the statute as to this than as to the $45,000 transaction to which it was held applicable by the lower Court. (Record, Ibid.)

The alleged declarations of Mrs. Patten, and her actions in connection with the so-called settlement of September, 1885, can be far more truly said to "bear directly upon and support issues made in the case" (Ibid.) than what she said and did when investing the $45,000 in her daughters' names. The relevancy of the latter facts in this controversy, or, at all events, the benefit which the complainants can derive from them, arises entirely in their removing the bar of the statute of limitations as tending to prove a payment on account of the indebtedness asserted; otherwise they would be to the detriment of the complainants and to the advantage of the decedent's estate, since their tendency upon the complainants'

theory, would be to diminish the amount which the latter might otherwise recover; but, since the whole case of the appellees depends upon the claim, that by causing them to execute, and, subsequently, herself retaining, the paper prepared by the witness Hillyer, Mrs. Patten became the debtor of each one of them in the amount therein named; what she said and did at the time the paper was signed touches the very gist of the whole controversy. It is very respectfully and confidently submitted that everything said on this subject by the complainants in their testimony must be excluded from the consideration of the Court.

(*C.*) The learned Judge delivering the opinion of the Court of Appeals (Record, page 390) notes that the *original* bill in this case was filed against the appellant Augusta *in her own right* as well as in the capacity of executrix of her mother, and also that an amended bill was subsequently filed by reason of one of the demurrers which were interposed; but he seems to have overlooked the fact that this amendment consisted in dismissing the suit against Mrs. Glover *indiviidually.* (Record, pages 1, 29, 31.) This oversight leads the Court, in dealing with the effect of the delivery of the bonds to Mrs. Glover about the time of her marriage, to find, in substance, that this was a payment on account of a debt due her by the testatrix, and not a gift. The relevancy of this whole enquiry depends upon the light it may throw on the relation of the testatrix to the other parties to the paper of September, 1885. The words and acts of Mrs. Patten, tending to show that she considered herself the debtor of the appellant Augusta, and that she gave her these bonds as a total or partial satisfaction of this indebtedness might be relevant evidence to establish her alleged recognition of a similar indebtedness to the other three signers of the same paper, and such words and acts might be admissible in evidence against her estate, provided that they were established by the evidence of competent witnesses; but the complainants were no less in-

competent to prove these acts or declarations than they were to prove those attending their execution of the paper in question, or those attending the investment of the $45,000 for their benefit. The question whether Mrs. Glover had or had not been paid wholly or in part the indebtedness which the appellees allege to have existed on the part of her mother towards her, would be wholly irrelevant to the issues joined in this cause, were it not that this supposed indebtedness arises out of the same transaction and is evidenced by the same paper writing as those asserted on behalf of the complainants in the cause. The conflict of interest is precisely the same in this instance as in the case of the $45,000 transaction; in the latter instance the complainants seek to show that their mother owed each of them $11,250 of principal less than, according to their contention, she otherwise would have owed, because, in so doing, they establish as they claim her recognition that she owed them the larger amount. In the former they seek to prove that she discharged in great part, or altogether (their testimony is conflicting on this point), an indebtedness to their sister, because they contend, upon precisely the same grounds, that her payment of this debt involved an acknowledgement that she remained indebted to themselves. Of course, as Mrs. Glover individually is not a party to the suit, her admissions or declarations before she became executrix are not evidence.

The lower Court would seem to have been led into error on this point by the misapprehension regarding the state of the pleading to which we have called attention *supra*.

Conceding, however, *argumenti gratia* that all of the facts upon which the appellees' claim to any relief rests, are well pleaded, and that all the evidence contained in the present Record, and offered on their behalf, is properly before the Court, the appellants submit that the

Record not only fails to show that the late Mrs. Patten understood herself, and was regarded by her daughters after September, 1885, as debtor to each one of them in a certain sum of money, payable on demand and bearing interest until paid, but establishes clearly that both she and they understood their mutual relations to be altogether different. The attention of the Court is particularly called to the question whether either party to the alleged transaction of September, 1885, understood that thereafter Mrs. Patten was bound to pay each of her daughters *legal interest* on the $101,600 alleged to have constituted at that time a liquidated indebtedness on her part towards each of them. This is really, for practical purposes, the vital point in the controversy, and it is also the crucial test for the accuracy of the appellees' contention. They were offered, as has been already noted (Record, pages 315 to 317) a settlement upon the basis that the $102,800 given to Mrs. Glover and the $11,250 given to each of them should be all alike treated as advancements, and charged against the respective donees. This offer they refused, because they, or their legal adviser at the time, supposed it would be more to their advantage to treat the transfer of bonds to Mrs. Glover as the payment of a debt. This advantage, however, depended entirely upon the theory that their mother was liable for interest upon the sums mentioned in the paper of September, 1885, if these sums were debts. If Mrs. Patten had given, as the complainants contend that she did, in substance, her demand note for $101,600 to each of her daughters in September, 1885, their claims against her estate would be now increased by some 67 per cent. of interest, and although the appellees, of course, concede that the $11,250, which they say she paid to each of them on account of the principal, also bears interest from the date of the payment; the subject matter of controversy in this case is increased by some $250,000 by the question whether interest was or was not understood to be payable upon the sums mentioned in the agreement of 1885.

The importance of the question is even greater in another aspect of the case; to appreciate this clearly, it may be well to here set forth briefly the contention of the appellants. At the time of Mr. Patten's death, substantially all of his considerable estate had been earned since his marriage, (testimony of William M. Stewart, Record, pages 324 and 325.) It constituted, therefore, what is known as "community property," in the law of Nevada, of which State he was a resident. By chapter 76, section 11, of the laws of that State, adopted during the legislative session of 1864-1865, it is provided that, "upon the dissolution of the community, by the death of the husband, one-half of the amount of property shall go to the surviving wife, and the other half shall be subject to the testamentary disposition of the husband, and in the absence of such disposition, shall go to his descendants equally, if such descendants are in the same degree of kindred to the intestate * * * provided, that in case of the dissolution of the community by the death of the husband, the entire amount of property shall be equally subject to his debts, the family allowance and the chaages and expenses of administration." This statute was in force when Mr. Patten died intestate, and leaving a widow and five daughters. Mrs. Patten qualified as administratrix, but it would seem to be questionable whether title to any part of her husband's estate vested in her as such; and if such be not the case, the necessity of any final accounts or distribution of the estate by her as such administratrix seems no less doubtful. She also qualified as guardian, but it does not appear clearly what, if any, property of her wards came into her possession by reason of this fact. However this may be, it would seem indisputable that, in the view of a Court of Equity, she would be regarded as a trustee holding the entire estate, in one undivided half part whereof she had a beneficial interest, the like interest being vested, to the extent of an undivided one-tenth, in each of her five daughters. It may be that, in

a sense, she held this property wrongfully, or, in other words, that her duty as guardian, required her to effect a partition of the undivided estate between her wards and herself. It may be also that for a failure to discharge this duty, had such failure resulted in loss to any of the wards, the sureties upon her bond as guardian for such ward would have been responsible. It is possible that if she had lost some portion of the undivided property by mistake of judgment, however excusable in itself, she would have been obliged to bear the entire loss, and there is also a possibility that there had been some technical breach of the conditions of her bond as administratrix, but all of these contingencies may be dismissed from consideration in dealing with the case as presented by the present record. Mrs. Patten administered the property of which she thus assumed control with great judgment and success. It increased largely in amount through judicious and fortunate investments, and as her daughters successively attained their majority they cheerfully and wisely acquiesced in her continued retention of its management. The eldest of these daughters had attained the age of twenty-one, four, the second, three, and the third two, years before the alleged settlement of 1885 was made. None of these had made any request of their mother for a settlement or distribution of the property. The fourth, who had attained the same age shortly before, testifies (Record, page 284): "My mother said to me one day that she wanted to buy a building on F. street, but she said 'I do not like to take your bonds,' and I told her then, 'Mamma, take whatever is mine, as you have always done, and do with it as you please, as I will always be satisfied,' and she told me I would never regret it." The same appellee, Edith Patten, says again, (Record, page 290): "I never questioned my mother about what she was doing, as I knew it was right. * * * I knew that my mother invested in real estate, but I do not

know how she bought it or anything about it; I never questioned her. * * * I told her that she could take any bonds that I had and use them as she pleased, put them in real estate, or anything else." The appellee, Mary E. Patten, says, regarding the delivery of the bonds to the appellant Augusta (Record, page 148): "Mamma asked Gussie to come into her room, and she stood in the doorway when I saw Mamma hand her an envelope with the bonds in it, and I saw Gussie return them to mamma, and she said 'keep them for me, *as you have kept them for me so long.*'"

These are but a few of the incidental statements scattered through the testimony of the appellees which show clearly that all of the daughters understood, no less after than before the transaction of September, 1885, that Mrs. Patten was holding the entire property left by their father as well for their benefit as for her own, and that, with this knowledge, they acquiesced in her retention of the property; a fact also established beyond any reasonable doubt or dispute by the petition for probate filed by these appellees on October 3d, 1888, and of which the more material portions are given on pages 42 and 43 of the Record, in which they averred that the personal estate of their testatrix amounted to only $120,332, of which the bulk was represented by an undivided interest in certain investments. Notwithstanding the numerous more or less skillful attempts made in the course of the testimony to explain away the statements of this petition, its significance is too evident to be mistaken.

In the view of the appellants, Mrs. Patten was therefore, a trustee for the benefit of her daughters to the extent, in each case, of one-tenth of the undivided property held in her name; they were in September, 1885, as they had been before, and remained afterwards, clearly entitled to an accounting from her as such trustee, and to a partition and distribution in severalty of such portion of the estate as might be found to belong to each of

them respectively. According to the contention which they now set up, this relation was then completely changed. Mrs. Patten became sole owner, legally and equitably, of the entire property left by her husband with its increment, and each of her daughters became her creditor for a specified sum. Thenceforward they had, according to their present contention, no claim upon their mother for a support and no right to benefit by any future increase in the amount of her income or the value of her estate. She owed each of them 6 per cent. annually on $101,600, until they might choose to demand the principal debt, but she could give or leave every dollar of the property which she then held to strangers with no greater responsibility to them than to any one from whom she had borrowed money or bought goods. It is sufficiently obvious that the demand by them and the payment by her of interest on these debts, or, at least, their assertion and her recognition of the right on their part to such interest must be found in the Record, if the Court is to accept this contention as true or even credible.

Now it is nearly as certain that she never understood herself to be thus responsible as it would be could she return to life and testify thus at the present time. In February, 1887, she would have owed the appellant Augusta, 8½ *per centum* interest on her $101,600, or, in all, $110,226.00; yet, according to the testimony of the appellee Josephine, Mrs. Patten hesitated whether she should give her supposed creditor, bonds of the face value of $79,000 or 80,000, because, at the then market price, $101,600 would have purchased an amount between these two figures, (Record, page 148,) and this is substantially confirmed by the testimony of the appellees' witness, C. C. Glover. (Record, pages 83 and 84.) It is stated repeatedly in different portions of the complainants' testimony that Mrs. Patten understood herself, and was understood by all her daughters, to have

satisfied whatever claim the appellant Augusta had by virtue of the alleged settlement in September, 1885, by this delivery of bonds. It is true that, in their pleading the appellees claim that this delivery constituted only a payment *on account*, but the amended petition for probate, (Record, pages 42 and 43) to which attention has already been called, and the constant unguarded references in their testimony to the transaction, show, it is submitted, to any impartial mind, that this contention is an afterthought. Independently, however, of the admitted fact that if Mrs. Patten owed each of her daughters interest on the sum mentioned in the paper of 1885, she would have underpaid Augusta in February, 1887, by more than $7,000 instead of overpaying her, as the appellee Josphine distinctly, and all the complainants by implication, assert that she did, the appellants respectfully ask whether any ordinarily intelligent person would have behaved towards her creditors as Mrs. Patten admittedly did subsequently to September, 1885. Her statements to the witnesses Beall and Snyder, quoted *supra*, show that instead of paying each of them $6,096 *per annum*, she had, prior to the $45,000 investment, given them the control of no income whatever. It seems little less than absurd that she should have talked of giving her daughters "pin money" or mentioned that she "had never made them any allowance," when she was adding each year $24,384 to her indebtedness by withholding what belonged to them of strict legal right.

And this contention of the appellees is no less inequitable than it is unreasonable. Mrs. Glover, according to their contention, had received what was due her; thereafter the income of her share of her father's estate was devoted to the expenses of her support, but, although it is admitted that they were supported completely by their mother after the settlement of 1885 and after the marriage of their sister, just as they had been before, al-

though it is not disputed that even the income of the $45,000 was given them only to spend as "pin money," and that all their necessary personal expenses, as well as those of the household, were borne by their mother, they nevertheless claim that every year she owed them more than $24,000 for the money which she might have used, and in justice to herself and her married daughter, ought to have used to defray the expenses of their maintenance. The Court will surely require clear evidence that the parties to a transaction understood it in a sense which would cause it to work such grave practical injustice as would have been the case here. Instead of such evidence this Record discloses absolutely no proof whatever that either party to the transaction of September, 1885, understood it in the sense now asserted by the appellees.

Of course, it is not claimed by the appellants that the transaction in September, 1885, was meaningless or nugatory. Mrs. Patten may well have intended, as is intimated in some portions of the testimony, to protect the sureties on her bonds as guardian and administratrix, from responsibility from any technical breach of her obligation in either capacity. It does not, indeed, appear that any of them had asked for such relief or that she ever found it needful for their protection to avail herself of the option granted her by the paper then executed, since, even in the case of Mrs. Glover, although she delivered to the latter bonds approximating in value the sum mentioned in the so-called agreement, she took no receipt then or later and never obtained written evidence by which the payment, if payment it was, could be connected with the contractual paper. The failure so to do on the part of a person of Mrs. Patten's sound judgment and wide experience in business matters, sufficiently shows that a desire to protect her sureties, although it may have influenced, was not the principal motive of, her action. What she really had in mind is indicated by the two exhibits, "M.

E. P. No. 3" and "M. E. P. No. 4," (Record page 339,) and various references made incidentally to the matter in the testimony of the several complainants. Exhibit "M. E. P. No. 4," which is said to be in the handwriting of the witness Hillyer, is evidently a rough valuation of assets of the trust estate, which aggregate $1,017,000; of this amount one half is made out to be, with a comparatively slight error in the calculation, $508,000, and immediately under this sum $101,600 shows, not the result of any accounting between Mrs. Patten and her daughters, but the value of an undivided one-fifth of the undivided half of the community property left by Edmund Patten, as it existed at the time when the paper of 1885, was executed.

It is made perfectly clear that this is the significance of the paper by the testimony of the complainants themselves. Thus, the appellee Edith A. Patten, testifies (Record, page 286:)

"Q. Did you know, as a matter of fact, how many bonds your mother had in the registry of the treasury at that time? A. No, I did not. Q. Look at this paper, and state if you ever saw it (handing the witness paper marked for identification Exhibit M. E. P. No. 4.) A. Yes, I saw that paper. Q. Where did you see it? A. In Warrenton, Virginia. Q. And is that the paper you refer to in your direct examination? A. Yes, sir, that is one of the papers. Q. Look at that paper, then, and refresh your recollection as to the quantity of bonds that your mother had *at that time*? A. Yes, $700,000."

It may here be noted in passing that the testimony of this witness and also of the appellees Mary E. Patten and Josephine A. Patten (Record, pages 146, 147, 230, 266) establish beyond question that there had been no real adjustment of counts between Mrs. Patten and her daughters prior to the execution of the paper of September, 1885, and nothing which would have enabled any of the complainants in this case to recover in an action of assumpsit on the count upon an account stated. It is true that the paper itself says: "Our said mother

and guardian has submitted to us for inspection all accounts and papers in her possession, touching or relating to the receipts and disbursements entering into such accounting," (Record, pages 2, 32;) but on having her attention called to this clause, and being asked: "What do you say as to that recital?" the appellee Josephine replies: "We all had *a general knowledge of all* the expenses, and we *could look* at mamma's check book and see any papers we desired to, and at the time mamma, showed us those papers that I have given you, she told us *she would take everything that was uncertain for her portion*," the papers referred to being Exhibits M. E. P., numbers 3 and 4. (Record, pages 146, 147.) The concluding words of this answer show that this complainant understood the transaction at Warrenton to be, not as an accounting, but as a division of the property then on hand. This is stated even more explicity by the appellee Edith, who, when asked: "In point of fact, has there ever been any settlement of your father's estate out in Nevada, or anywhere else, so for as you know?" replies: "*We divided it* at Warrenton" (Record, page 287;) and the appellee Mary, although she seeks to qualify the effect of her affidavit to the amended petition for probate heretofore noted, yet says: "Of course, I knew the property was purchased with my money. * * She had our money." She is then interrogated: "And invested yours and hers alike. Is not that so?" replying: "Yes * * my mother used to be making good investments with our consent." (Record, page 241.)

In short, what was done at Warrenton in September, 1885, was merely to ascertain the value of the community property left by Edmund Patten, and to determine what share of the aggregate value of this property belonged to his widow and what to each of his children. Thereafter, as theretofore, Mrs. Patten continued, with the knowledge and consent of her daughters, and in the common interest of all, to invest and control the entire

property. They were then entitled to a distribution of this property with the benefit of the increment secured by her fortunate investment; they are still so entitled, unless, perhaps, they have lost their equity by laches, or rather by the time lost in attempting to give to the transaction of 1885, a wholly erroneous construction. But it is respectfully submitted that their claim to be allowed nearly $25,000 as interest for every year during which their mother, with thesr consent, was investing their money for their benefit, and using its income for their support, deserves countenance from no judicial tribunal, and least of all from a Court of conscience.

If, however, the appellees choose to be regarded merely as their mother's legal creditors and with no other rights than those arising from that relation, then they must accept the consequences of this contention. It is an old and well established rule of law that a benefaction conferred by will upon the testator's creditor, and exceeding the amount of his debt, is presumed to be given in satisfaction of this debt, and the beneficiary cannot claim both under the will and as creditor. No Act of Congress, no Maryland Statute in force in the District, affects the application of this rule to the present case. No doubt this presumption is rebuttable, for the testator may either, by express words or necessary implication, indicate his intention that the creditor shall be paid his debt, and also receive the bounty conferred by the will, but, in the absence of anything which may serve to rebut it, the presumption must govern the construction of the will. Is there anything to rebut this presumption in the present case?

The learned Judge who delivered the opinion of the Court of Appeals, alludes to two circumstances which should take the case of the operation of the rule in question, namely, the fact that the will was made six

years before the supposed indebteness of the testatrix became liquidated, and "the acknowledgment of the existence of the debts and the payments made to Mrs. Glover and the complainants long after the will had been made." (Record, pages 365, 396.) It is respectfully submitted that the learned Judge was in error in both points.

It is no doubt true that the presumption of satisfaction by legacy does not arise when the debt has been *created* subsequently to the execution of the will, but in this case the indebtedness, such as it was, arose when Mrs. Patten received the whole of her husband's estate, and held and invested all of it as her own, and this is alleged in the paper of 1885, itself, to have occurred in the years '73, '74 and '75, from four to six years before the execution of the will. She must have known in 1879, that she had received and thus appropriated the property of her children and wards, and, independently of any presumption, there is no room to doubt that she intended the provisions of her will to satisfy any claim, of whatever kind, which any of them then had upon her. Even if we could suppose that the transaction at Warrenton amounted to an account stated, it is well settled that an account stated, does not extinguish or supersede or alter the previous debts respecting which it was stated.

Fidgett vs. Penny, 1 C. M. & R. 108.
Smith vs. Page, 15 M. & W., 683.
Perry vs. Atwood, 6 E. & B., 691.

And it is submitted with confidence that no well considered case can be found in which, under circumstances truly analogous to the present, the presumption has been held not to apply.

In referring to the testimony establishing acknowledgment of the debts by Mrs. Patten, and part payments on account thereof, the Court assumes, of course, that such testimony has been furnished by competent witnesses. It has been already noted in connection with

the defence of the statute of limitations that all the testimony on this subject is inadmissible by reason of incompetency on the part of the witnesses furnishing it, except the evidence of Snyder and Beall, and that this evidence is wholly insufficient, not only to remove the bar of the statute, but to establish *for any purpose* a distinct acknowledgment of a specific debt.

Bell vs. Morrison, 1 Pet. 351.

It is moreover, to say the least, extremely questionable whether parol evidence is admissible at all for the purpose of rebutting this presumption.

Williams on Executors, (7th Eng. Ed.) page 1302.

Waiving, however, both these considerations, it is sufficient here to note that the learned Judge apparently supposes that a satisfaction of a debt by a legacy must occur *when the will is made* and not when it takes effect, since, otherwise, the acknowledgment of the debt as existing "long after the will had been made" could have no possible relevancy as showing that the testatrix did not contemplate a satisfaction by the will of whatever might be due to her several children when this should become operative by her death. For the singular doctrine thus intimated, no authority is cited by the Court, and none has been found by the counsel for the appellants.

It is undoubtedly true that, as said by the Court, this presumption, although well recognized and long established, is not much favored, and that comparatively slight circumstances will be relied upon by Courts to prevent it from working injustice. In this case, however, the Court is respectfully asked to apply it in order to prevent an injustice, of which there is grave danger, provided, the complainants are allowed by their own testimony to place upon the words and acts of their deceased mother a construction which this very testimony shows to be forced and improbable.

As has been already noted, they can still establish by proper proceedings their rights as *cetteux que trustent* against the estate of their trustee to an accounting for the *corpus* of the property held by her for the benefit of each one of them, respectively, and for the balance, if any there be, of their several incomes over the expenses of their maintenance. To this they are clearly entitled, unless, possibly, their claim may be held to be barred by lapse of time spent in seeking by inappropriate proceedings to obtain more than their equitable due. They have been offered, and have refused, a settlement which would have assured equality among the children of their parents in the distribution of their patrimony. It is respectfully submitted, that the rule of presumed satisfaction by legacy has never been invoked under circumstances entitling it to have greater weight with a Court of conscience.

CHARLES J. BONAPARTE,

Counsel for Appellants.

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Supreme Court, U. S.
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OCTOBER TERM, 1896.

No. 78.

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vs.

MARY E. PATTEN, JOSEPHINE A. PATTEN, EDITH PATTEN, AND HELEN PATTEN.

BRIEF IN BEHALF OF THE APPELLEES.

HENRY E. DAVIS,
Counsel for the Appellees.

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I.

STATEMENT OF THE CASE.

The contentions of the appellants under their several assignments of error render necessary, in the judgment of counsel for the appellees, a fuller statement of the case than that contained in the brief for the appellants, and, at the risk of undue prolixity, the case is stated as follows:

The appellees and the appellant Augusta P. Glover are sisters, being the daughters and only heirs-at-law of Anastasia Patten, late of the District of Columbia, deceased,

and of Edmund Patten, late of the State of Nevada, deceased. Anastasia Patten died September 11, 1888, testate, and Edmund Patten died November 16, 1872, intestate.

Upon Mr. Patten's death, his widow became his administratrix and also the guardian of each of his children, all of whom then were and for some years afterwards continued to be minors under the age of twenty-one years. By the law of Nevada, Mrs. Patten became entitled on her husband's death to one half of his estate and the other half descended to his children. Mrs. Patten, as administratrix and guardian, took possession of the entire estate and retained the same down to the time of her death. She never made any accounting as either administratrix or guardian, nor did she keep any regular accounts nor preserve her vouchers.

In September, 1885, because of a desire on the part of the sureties on her bonds, or some of them, to have her accounts settled (but for whatever reason is wholly immaterial), Mrs. Patten undertook to adjust her accounts with her children. She called in the services of a friend of her husband and herself (Curtis J. Hillyer; see his deposition, Rec., pp. 67–82), and the result was the preparation of a paper-writing intended to take the place of the proper formal account and vouchers. (This paper-writing is printed in the record at several places, pp. 2–3, 32–'3, 54.)

The recitals of this document are, in substance, as follows: *Whereas*, as guardian of her children, Mrs. Patten had received certain amounts of money, being their portion by inheritance of the estate of their father; and *whereas* she had not invested such money separately, but had kept and safely invested it in connection with moneys belonging to her in her own right derived from the said estate; and *whereas* she had had entire charge of the children's maintenance and education, and had, during a period of thirteen years, incurred large family expenses for their benefit, of which expenses no account had been kept by her; and *whereas* the

children and she, their guardian, were desirous of settling the account between them in a just and equitable manner without attempting to secure technical accuracy in such settlement; and *whereas* she, their mother and guardian, had submitted to them, her children and wards, for inspection all accounts and papers in her possession touching or relating to the receipts and disbursements entering into such accounting, and they, the children and wards, had personally general knowledge concerning the family expenses during the period aforesaid; and *whereas* from such examination and knowledge they, the wards, believed that by a payment to each of them by their said guardian of the sum of $101,600 an equitable settlement would be made and full justice done to each of them: *Therefore* each of them agreed to accept said sum in full and complete settlement of all accounts, claims, and demands between them and each of them and their said mother and guardian, and in full satisfaction of all claims and demands of whatever character arising out of or connected with the administration of said estate or the said relation of guardian and ward; and each of them for herself authorized and requested that, upon the presentation of this agreement and a receipt for the above amount, the court having jurisdiction thereof would, without further investigation of accounts, so far as concerned either of them, the wards, pass the final accounts of their mother as administratrix and guardian, and by proper decree discharge those liable as bondsmen for her action in either capacity.

This paper was signed by all of the appellees except Helen, and by the appellant Augusta. The only reason that it was not signed by Helen was that she was the only one of the children who had not then attained the age of twenty-one years. In this proceeding, as will be seen, she adopts and accepts the adjustment and settlement evidenced by the paper as though she had duly participated in the same at the time of its making.

This paper was never presented by Mrs. Patten to the proper court or any court, and it was in her possession when she died. Nor did she at the time pay to her children and wards or any of them the sum therein mentioned in settlement of her indebtedness to them. On the contrary, she went on as before until February, 1887, when her daughter, the appellant Augusta, was on the point of marrying her now husband and coappellant. Then she assigned and transferred to Augusta United States Government bonds of the par value of $80,000 and the actual value of $102,800, with the benefit of the interest accruing thereon since the preceding 1st day of January. Then Augusta married and left her mother's home to take up her new life.

But Mrs. Patten did not at the same time pay or give her other daughters anything on account of her indebtedness to them. In the following autumn, however, namely, on October 15, 1887, she made for them and in their names an investment of the sum of $45,000, being at the rate of $11,250 for each, which the complainants claim to have been a payment on account of her indebtedness to them. The testimony as to this transaction will be considered hereinafter, but at this point it may be said to be undisputed that the interest on this investment, from the time it was made until Mrs. Patten's death and thereafter, was always deposited in bank to the credit of the appellees and for their account.

Within a year after this transaction, namely, on September 11, 1888, Mrs. Patten died, without having done anything further towards settling her accounts as administratrix or guardian or paying her indebtedness to the appellees. It was found that she had left a will (Rec., pp. 6–7), bearing date December 23, 1879, some seven years after her husband's death, and nearly six years before the preparation and execution of the paper of September, 1885.

By the terms of this will, Mrs. Patten devised and bequeathed the whole of her estate, subject to $45,000 in lega-

cies, to her five daughters, and named as her executrices such of them as might have attained the age of majority at the time of her death and who should not be otherwise incapacitated to undertake the trust. By virtue of the latter provision all of the daughters were appointed and qualified in the supreme court of the District of Columbia as executrices. But as the will was executed in the presence of two witnesses only, it was invalid to pass real estate situate in the District of Columbia, and the greater part of Mrs. Patten's estate at the time of her death consisted in such real estate, which accordingly descended to her daughters as though she had died intestate.

The daughters having all qualified as executrices and having entered upon the discharge of their duties, the appellees, claiming to be creditors of the estate of which they were also executrices, presented to the supreme court of the District of Columbia a petition, which has been put in evidence in the case and a true copy of which is set forth in the abandoned cross-bill of the defendant John M. Glover. (Rec., pp. 53–'6.)

This petition, after reciting the indebtedness of Mrs. Patten to all of her daughters, including Mrs. Glover, by reason of her gurdianship, proceeded with the allegations: that in September, 1885, the amount of her indebtedness was adjusted, settled, and determined by mutual agreement (except as to Helen), evidenced by the paper-writing of that month hereinbefore described; that Helen, being fully advised in the premises, adopted and accepted the said agreement and settlement; that by virtue of the premises Mrs. Patten became and was indebted to each of the appellees and Mrs. Glover as of that date in the sum of $101,600; that on February 17, 1887, as of January 1, 1887, Mrs. Patten paid on account of her indebtedness to Mrs. Glover $102,800 by transferring to her bonds of the United States; that afterwards Mrs. Patten paid each of the appellees on account the

sum of $11,250, and that by virtue of the premises the estate of Mrs. Patten stood indebted accordingly; but, as the appellees were advised that they might not retain for their claims unless passed by the court, they accordingly in their petition prayed the court to pass and authorize the payment of the same.

Upon this petition a rule to show cause issued to Mrs. Glover, the remaining executrix, and she appeared and filed an answer, which also is truly set forth in the abandoned cross-bill. (Rec., pp. 56–60.)

In this answer Mrs. Glover, admitting the inheritance by her and the complainants of the estate aforesaid from their father, set forth and contended in substance, as stated in the tenth paragraph of the amended bill (Rec., pp. 34–'5), as follows:

That the said testatrix did become guardian of the complainants and said defendant, as alleged, and did receive their said estate aforesaid as such guardian, but that said testatrix never formally settled her accounts as such guardian, she not having been called upon so to do; that the paper set forth in the sixth paragraph of this bill was drawn and signed in order to enable said testatrix formally to close her accounts as guardian as aforesaid, but that the amounts agreed by the terms of said paper to be accepted by the complainants and said defendant were never paid nor was any evidence of indebtedness given to them or any of them, and that notwithstanding said paper, the accounts of said testatrix, as guardian as aforesaid, remained open at the time of her death, and the said estate of the complainants and the said defendant was dealt with by said testatrix after the execution of said paper in the same manner as before the same was so as aforesaid drawn and signed; and that therefore, by reason of the circumstances, a trust existed on the part of the said testatrix towards the complainants and the said defendant in respect of their said estate, and that the relation of said testatrix to the complainants and the said defendant was recognized and treated by her to the day of her death as that of trustee and *cestuis que trustent* and not of debtor and creditors; and in and by her said answer afore-

said the said defendant further set forth and contended that by her said last will and testament the said testatrix devised, subject to certain bequests of comparatively trifling amount, all her estate, real and personal, as well the estate of the said defendant and the complainants so as aforesaid alleged to have been held in trust for them as her own estate, and that such devise operated the extinguishment, discharge, and payment of any claim upon the part of the complainants in the premises, and that their said claims aforesaid ceased to be provable as debts against the estate of said testatrix, and that such alleged extinguishment, discharge, and payment are not affected by the fact that the said defendant and the complainants took title to the real estate of said testatrix by descent instead of by devise, in consequence of the insufficient execution of said last will and testament as aforesaid, and that the several indebtednesses alleged by these complainants were never recognized or acted upon by said testatrix and no part payments were made by her on account thereof.

Upon consideration of the petition and answer, the court made the following order:

The petition of Mary E. Patten, Josephine A. Patten, Edith Patten, and Helen Patten, with the answer thereto of Augusta P. Glover, in pursuance of the rule to show cause, now came on to be heard and was argued by counsel and considered by the court, and it appearing to the court that the said petition presents *a subject-matter within the jurisdiction of the court*, but that the claims of the petitioners cannot be determined by this court without the determination of matters whereof this court has not jurisdiction, such as the effect upon the said claims of the will of the testatrix, the payment to respondent on account, as alleged and denied, and other matters, it may be, it is therefore ordered, adjudged, and decreed this 13th day of June, 1889, that *further action* upon the said petition be, and the same is hereby, *suspended* until said other matters whereof this court has not jurisdiction shall be first tried and determined in the appropriate tribunal in such manner as counsel may advise. (Rec., pp. 60–'1.)

This action of the court resulted in the institution of this suit.

In view of the state of the case, it is necessary to consider of the appellees' pleadings the amended bill only (Rec., p. 31); but it may be said, in passing, that the scheme of the original bill and that of the amended bill are identical and their scope is the same, except that the original bill made Mrs. Glover party defendant in the dual character of executrix and individual, and sought also to charge her, in the alternative, with the payment to her in February, 1887, as an advancement; as to the first of which features of the original bill the demurrer of Mr. Glover was sustained, and as to the second of which the demurrers of both Mr. and Mrs. Glover were sustained: with the result that both features were omitted from the amended bill—Mrs. Glover being now sued only as executrix and the question of advancement being eliminated.

Considering, then, the amended bill, it sets forth the hereinbefore recited facts as to the death of Mr. Patten, the conduct of Mrs. Patten as guardian, the execution of the paper of September, 1885, the death of Mrs. Patten, and her will, and the proceedings in the supreme court of the District of Columbia, holding a special term for orphans' court business (called, for convenience, the "orphans' court"); and, referring to the terms of the order of the "orphans' court" as to those matters of which it had not jurisdiction, the bill proceeds as follows (Rec., p. 35, par. 12):

That the complainants being desirous that said matters as aforesaid may be tried and determined as in and by said order required, and being advised that said matters cannot otherwise be tried and determined than by this court sitting in equity, they therefore file this their bill of complaint to that end, and in that behalf they state further that at the time of making and signing the said paper, on the — day of September, 1885, in the sixth paragraph hereinbefore set forth, all of the complainants and the defendant Augusta P. Glover, except the complainant Helen, were of full age, to

wit, of the age of twenty-one years, and the said Helen was of full age so as to be entitled to receive her estate from said testatrix as her guardian, to wit, above the age of sixteen years; that by virtue of such the several ages of the complainants and the said defendant they were and each of them was capable and entitled in law to have and receive from their said guardian their said estate as aforesaid, and it then was and for a long time theretofore had been the duty in law of said testatrix, guardian as aforesaid, to deliver to them and each of them their said estate as aforesaid, the same consisting in contemplation of law exclusively of money; that thereby the said testatrix, as guardian as aforesaid, was and had theretofore become in law the debtor of the complainants and the said defendant and each of them without regard to said paper so drawn and signed as aforesaid, and the said paper was only in law an adjustment, accounting, and settlement between the said testatrix, guardian as aforesaid, on the one part, and the complainants and the said defendant, on the other, having for its object and purpose the ascertainment of the amount of indebtedness of the said testatrix to the complainants and the said defendant and each of them; that the residuary devise and bequest to the complainants and said defendant of said last will and testament of said testatrix, being in general terms and not of any specific property, estate, or amount and having been made before said indebtednesses were ascertained, does not in law constitute such a devise and bequest as does or can operate a payment or discharge of said several indebtednesses as aforesaid, and it was not the intention of said testatrix that the same should so operate; that even if the relation between said testatrix, guardian as aforesaid, on the one part, and the complainants and the said defendant, on the other, were not the relation of debtor and creditors, yet, nevertheless, the complainants and the said defendant, being sole heirs-at-law, next of kin, and residuary devisees and legatees as aforesaid, now stand in the place of said testatrix in respect of any liability to themselves on account of any trust relation in which said testatrix may have stood to them, and so there can arise and be determined in the premises no question of trust or liability or obligation growing out of any supposed relation of trust.

And in view of the premises the bill prays (1) for process, an answer under oath being waived (see equity rule 63, supreme court, D. C.; Rec., p. 388); (2) for construction of Mrs. Patten's will; (3) for adjudication and determination of the complainants' rights, claims, and demands, and (4) for general relief.

The demurrers of Mrs. Glover to the amended bill having been stricken out and those of Mr. Glover having been overruled, the case is to be considered as to their pleadings with regard only to their answers, subject to the familiar principle that the answers of Mrs. Glover to the original and amended bills are to be read together—an important principle in the premises, because, as will be seen hereafter, she admits in her answer to the original bill material matters which in her answer to the amended bill she denies.

In passing now to a consideration of the answers, the case as made by the bill may, at the risk of repetition, first be summarized as follows:

The appellees and the appellant Augusta are the only children, heirs-at-law, and next of kin of Anastasia Patten, late of the District of Columbia, deceased. Mrs. Patten left a will executed December 23, 1879, and died September 11, 1888. The appellees and the said appellant were duly appointed and qualified as executrices of the will.

It is alleged by the bill (Rec., pp. 31–'6) that in her lifetime Mrs. Patten was indebted to her children as their guardian, and that in September, 1885, this indebtedness was ascertained to be in the sum of $101,600 to each child (par. 6), and (par. 7) that she made certain payments on account of the several indebtednesses to both the appellees and the appellant Augusta, by virtue whereof (par. 8) her estate stands indebted accordingly.

The bill then proceeds (par. 9) to set forth that the appellees, having been advised that they might not as executrices

retain for their claims against the testatrix unless the same were first passed by the supreme court of the District of Columbia, sitting as an orphans' court, to that end presented to that court so sitting their petition in that behalf, which petition the appellant Augusta answered; that in and by her answer the said appellant set forth certain contentions, among them being that the relation of the testatrix to her children was that of trustee and not of debtor, and that the will, by reason of its provisions, operated the extinguishment, discharge, and payment of the appellees' claims (par. 10); and that upon consideration of the petition and answer the court adjudged and ordered that the petition presented a subject-matter within its jurisdiction, but that the claims of the appellees could not be determined by the court in the capacity in which it then was sitting without the determination of matters of which, in that capacity, it had not jurisdiction, "such as the effect upon said claims of the said last will and testament of said testatrix, the payment to the defendant [the appellant Augusta] on account, as alleged and denied, and other matters it may be," and that "further action upon said petition" was suspended until the matters of which the court in the capacity aforesaid had not jurisdiction should be determined in the appropriate tribunal. (Par. 11.)

Wherefore, says the bill, "the complainants [appellees] being desirous that *said matters* as aforesaid may be tried and determined as in and by said order required, and being advised that *said matters* cannot otherwise be tried and determined than by this court sitting in equity, they therefore file this their bill of complaint *to that end*" (par. 12); and "*in that behalf*" the bill adds, among other things, that, by virtue of premises recited, the testatrix was in law the debtor of the appellees and the appellant Augusta *without regard* to the adjustment of September, 1885, which latter had for its object, not the creation of the indebtedness, but the *ascertainment* of the *amount* thereof; that the provisions of the

will set up by the appellant Augusta were not such as to extinguish or discharge the claims of the appellees, and that as to the alleged relation of trustee and *cestuis que trustent* no question can now arise, the appellees and the appellant Augusta being the sole heirs-at-law, &c., of the supposed trustee and being themselves the alleged *cestuis que trustent.*

The prayers of the bill are (1) for process, (2) for construction of the will "in view of its terms and provisions and the hereinbefore-recited facts and premises," (3) "that the rights, claims, and demands of the appellees *in the premises* may be adjudged and determined by this court," and (4) for general relief.

The scheme of the bill is thus seen to be too simple and plain to admit of misconception; it is nothing more nor less than an application to the court to adjudge and determine certain questions in aid of another branch of the court already in possession (and, by virtue of the law, exclusively authorized to be) of a proceeding seeking the establishment of an alleged indebtedness against a decedent's estate, which proceeding in the other branch of the court stands distinctively *retained* by that branch, awaiting the determination of the very questions mentioned. That there could be no doubt of the object and scope of the bill, it sets out in terms the case necessitating application to the branch of the court referred to, the determination of that branch that the application had properly been made to it, but that it could not effectively be acted upon until certain questions were determined elsewhere, and that "to that end," to wit, the determination of those questions, the bill was filed.

The defenses set up are, as has already appeared, contained in separate answers of the defendants.

Mrs. Glover in her answer (Rec., pp. 38–45, 62) admits the allegations of the first five paragraphs of the bill, namely, (1) and (2) the characters in which the parties sue and are

sued, (3) the death and will of Mrs. Patten, (4) that the appellees and Mrs. Glover are Mrs. Patten's only children, heirs-at-law, and next of kin, and (5) the appointment and qualification of the appellees and Mrs. Glover as Mrs. Patten's executrices.

She also admits the inheritance by them from their father; that Mrs. Patten was appointed their guardian and as such received their estate; that the paper of September, 1885, was signed as alleged, and that the appellee Helen was at that time over sixteen and under twenty-one years of age (par. 6). The remaining allegations of the sixth paragraph of the (amended) bill she denies. These allegations are that the amount of Mrs. Patten's indebtedness to her daughters was adjusted, settled, and determined by mutual agreement of the parties, evidenced by the paper, and that by virtue of the premises Mrs. Patten became and was indebted as of that date to each of her daughters in the sum of $101,600. In her answer to the original bill Mrs. Glover admitted that in her lifetime Mrs. Patten was indebted to her daughters. (Rec., p. 9, par. 6.)

She denies the allegations of the seventh paragraph of the bill, namely, the payment to her in February, 1887, by a transfer of $80,000 of United States bonds worth $102,800, and the payments to the complainants in October, 1887. (Rec., p. 38, par. 7; Rec., p. 62.)

She denies the allegation of the eighth paragraph of the bill that Mrs. Patten's estate stands indebted to her in the sum of $101,600 as of September, 1885, subject to a credit of $102,800 as of January, 1887 (Rec., p. 62). The allegation of the eighth paragraph of Mrs. Patten's indebtedness to the appellees is not answered, except by the general denial of the answer. (Rec., p. 45, par. 26.)

She denies the allegations and averments (called in the answer "averments" only) of the ninth, tenth, eleventh, and twelfth paragraphs of the bill, which set forth the necessity of the application to the "orphans' court," the pro-

ceedings therein, and the occasion of filing the bill, and state the appellees' case in law. In her answer to the original bill she in effect admits all of these allegations, denying only the conclusions of law set up by the appellees. (Rec., pp. 9–10.)

She then proceeds, by way of further answer, to set up various contentions in opposition to the claims of the appellees, which contentions, however, it is unnecessary to set forth here, as they will be considered (so far as now insisted upon), under the several assignments of error. They may be found *in extenso* on pages 39 to 45 of the Record.

The answer of Mr. Glover (Rec., pp. 46–'9) differs in some not very material particulars from that of his wife. He denies quite every allegation of the bill deemed by him material, notwithstanding that as to some of the allegations his denial must be seen to be plainly in the face of his knowledge, information, and belief. His contentions also, so far as important to be considered at all, will be treated with those of Mrs. Glover under the assignments of error.

II.

ARGUMENT.

(I.) The first general assignment of error contains six specifications, which will be dealt with in their order.

1. The contention that the appellee Helen was improperly joined as a party complainant to the bill rests upon a misapprehension of the character of the proceeding and the cause of action.

It is said in the appellants' brief (p. 5), referring to the paper of September, 1885, that "the appellees contend that *by the execution of this paper* on the part of its four sub-

scribers, at the request of their mother, she *became* indebted to each of them;" and, again (p. 6), that "the bill states that Mrs. Patten and four other persons, of whom Helen Patten was not one, entered into an agreement in September, 1885, which is set out in the pleading, and thereby *created inter sese* the relation of debtor and creditors; but Helen had nothing to do with this agreement." This same suggestion occurs several other times in the brief. (See pp. 9, 17, 18.)

This is a plain misconception of the object and scope of the bill, as abundantly appears from the statement of the case herein above made. In paragraph 12 of the amended bill (Rec. 35, fol. 50) it is distinctly alleged, in reference to the paper and its execution, that by virtue of recited premises Mrs. Patten—

"had *theretofore* become in law the debtor of the complainants and the said defendant and each of them *without regard to said paper* so drawn and signed as aforesaid, and the said paper was only in law an *adjustment, accounting, and settlement* between the said testatrix, guardian as aforesaid, on the one part, and the complainants and the said defendant, on the other, having for its object and purpose the *ascertainment of the amount of indebtedness* of the said testatrix to the complainants and the said defendant and each of them."

The scheme of the bill thus assumes an indebtedness of Mrs. Patten to all five of her daughters growing out of her relations to their father's estate and an ascertainment in 1885 of the amount of that indebtedness, so far as four of the daughters were concerned. Helen, who was not then of age, adopts that ascertainment, notwithstanding her clear right to go back of it, and she accordingly unites with her sisters in the effort to enforce payment of the indebtedness on the basis of that ascertainment, although the indebtedness does not rest upon the ascertainment, which in fact grew out of the already existing indebtedness. In other

words, the indebtedness caused the ascertainment and not the reverse.

2. The contention that there is a non-joinder of necessary parties defendant likewise rests upon a misconception of the character of the case.

It is said in the brief for the appellants (p. 7) that "the complainants come into equity as executrices." This is a plain mistake. The first paragraph of the amended bill (Rec., p. 31, fol. 45) alleges that the complainants "bring this suit *in their own right*," and the whole hypothesis of the bill is an indebtedness of Mrs. Patten to them as individuals arising wholly without regard to their character as executrices and long before their mother's death. They come into court as creditors, not as executrices, of their mother's estate, and as the bill is not one for administration of the whole estate, but only for the establishment of a debt, the legatees are no more entitled or proper to be made parties than they would be in a suit of a creditor at law against an executor.

3. The contention that "the bill discloses no good cause of action" rests upon the same misconception of the character of the suit pointed out above.

It is said in the brief for the appellants (p. 8) that the case of the appellees "is that their testatrix, *by* causing three of them and the appellant Augusta to execute the paper of September, 1885, *became* debtor to each of her five daughters," &c. As already abundantly shown, this is *not* the case of the appellees. Their case is that their mother was their debtor without regard to the paper in question; that their debts not having been paid in their mother's lifetime, they found themselves compelled to resort to her estate; that becoming executrices of their mother's will they could not sue themselves, and, also, by virtue of the law of the jurisdiction (act of Maryland of 1798, ch. 101, sub-c. 8, sec. 19), they could not retain for their claims unless the same were passed

by the "orphans' court;" that upon presenting their claims to the "orphans' court" they were met with objections which that court was without jurisdiction to determine, and that, accordingly, they were driven to the equity court for the determination of the matters of the objections; hence the bill of complaint.

If the appellees have no case, it can be only because the law of this jurisdiction puts it in the power of an executor to deprive his co-executor of a just claim against their common testator by the mere act of raising in the "orphans' court" questions *of law* which will drive that co-executor out of that court into a court of equity.

The case being as it is, all that is said in the brief for the appellants (p. 9) about there being "no agreement by Mrs. Patten to pay the sum named," and "no consideration for the agreement to accept this sum," and "a *locus penitentiæ*," and "no completed contract," &c., &c., is (be it said with all respect to the learned counsel for the appellants) seen to be wholly irrelevant and inapplicable, and the assumption (pp. 9, 10) that the appellees could not "have sued their testatrix in assumpsit or debt during her lifetime [n]or could now thus sue her executor, were this some one else than themselves," is (with like respect) equally beside the case.

4. The defense of limitations may be disposed of in a few lines.

a. It is the unquestioned law of this jurisdiction that the defense of limitations cannot be set up against an executor's claim, whether the executor be sole or one of several.

State *vs.* Reigart, 1 Gill, 1.
Brown *vs.* Stewart, 4 Md. Ch., 368.
Spencer *vs.* Spencer, 4 Md. Ch., 456.
Semmes *vs.* Young, 10 Md., pp. 247–'8.

b. But even assuming that limitations may be pleaded to the claim of an executor, there is no room for such plea in this case.

The hypothesis of the bill is an indebtedness by Mrs. Patten to the appellees, admitted by both appellants (by Mrs. Glover explicitly in her original answer—Rec., p. 9, par. 6—and impliedly in her second answer, and by her husband explicitly in his answer to the amended bill—Rec., p. 47, par. 15; an ascertainment of the amount of such indebtedness in September, 1885, and a part payment in October, 1887, within less than two years and three months before the suit was brought.

That the transaction between Mrs. Patten and the appellees in October, 1887, involved a recognition by her of her indebtedness to them and a payment on account thereof is clearly established. Apart from the presumption of law that the payment of a sum of money by a debtor to his creditor is a payment of or on account of the debt, (see the rule as stated by the court below in its opinion, Rec., p. 396); and apart from the testimony of the appellees, the fact of a payment on account is established by the testimony of Messrs. Snyder and Beall (Rec., pp. 85, 101). While it may be conceded that some of the language attributed by these witnesses to Mrs. Patten, if considered in its technical meaning, may tend to support the contention of the appellants that the passing to the appellees of the sum of $45,000 in question was in the nature of a gift, the clear result of their testimony is, as stated by the witness Beall, that, as Mrs. Patten had previously turned over to Mrs. Glover her portion of her father's estate (Rec., p. 105, fol. 173), she was in that transaction making a payment to the appellees on account of their portions. (*Ibid.*; Rec., p. 103, fol. 168; 104, fol. 170–'1.)

The testimony of the appellees to this point is confessedly clear and direct. (Rec., p. 144, fol. 260; p. 151, fol. 262; p. 215, fol. 385–'6; p. 235, fol. 425; p. 270, fol. 492–'3.) The

court below thought this testimony not admissible (Rec., p. 394). This question is considered hereinafter under the next specification of error, 5 (*b*).

5. It is next contended that the case of the appellees depends upon the testimony of incompetent witnesses and upon evidence otherwise inadmissible.

a. The testimony of Judge Hillyer is objected to as stating privileged communications.

But, says Judge Hillyer, Mrs. Patten "consulted me as a friend, not otherwise" (Rec., p. 69, fol. 98), and it clearly appears that his relation to the matter was in such character only. His account (the only one in the record) is as follows:

"Mrs. Patten was at our house quite often and talked over her business matters, probably as freely with me as she did with anybody, and *it came out in course of conversation* with her that she had not settled up her accounts in the probate court in Virginia City, and I told her that I thought she ought not to allow those things to run along loosely in that way as she was doing, but that some kind of settlement should be made with the children, and, if possible, of her accounts. That was the way the conversation originated." (Rec., pp. 68–'9, fol. 97–'8.)

The objection to his testimony is, therefore, clearly without foundation.

Where one who, although an attorney-at-law, acted as a friend, there is no privilege.

Beeson *vs.* Beeson, 9 Pa. St., 279.
Romberg *vs.* Hughes, 18 Nebr., 579.
Rex *vs.* Brewer, 6 C. & P., 363.
Branden *vs.* Gowing, 7 Rich., 459.
Thompson *vs.* Kilbourne, 28 Vt., 750.
Goltia *vs.* Wolcott, 14 Ill., 89.
Hoffman *vs.* Smith, 1 Caines, 157.
19 Am. & Eng. Encyc. of Law, p. 136, note.

Even where the acknowledged relation of attorney and client existed, to make it privileged the attorney must have derived his knowledge from that relation.

Chillicothe, &c., Co. *vs.* Jameson, 48 Ill., 281.
Crawford *vs.* McKissack, 1 Port. (Ala.), 433.
Morgan *vs.* Shaw, 4 Madd., 37.
Wilson *vs.* Rastall, 4 Tenn., 753.
Hatton *vs.* Robinson, 14 Pick., 416.
Foster *vs.* Hall, 12 Pick., 89.
Gower *vs.* Emery, 18 Me., 82.

The communication, to be privileged, must have been made to the attorney in his character of legal adviser, and in regard to the business about which the legal advice was sought.

Earle *vs.* Grant, 46 Vt., 113.
McManus *vs.* State, 2 Head, 213.
Oliver *vs.* Cameron, McA. & M., 237.
Flack *vs.* Neill, 26 Tex., 273.
Branden *vs.* Gowing, *ubi supra.*
Wilson *vs.* Rastall, *ubi supra.*
Coon *vs.* Swan, 30 Vt., 6.
Brown *vs.* Matthews, 79 Ga., 1.

The communication, to be privileged, must have been received in the relation of attorney and client, and in the course of professional business, and must have been confidential.

Sharon *vs.* Sharon, 79 Cal., 636, 678.
Rochester Bank *vs.* Suydam, 5 How. Pr., 255.
1 Greenl. Ev., sec. 239, p. 322, note (*b*).
House *vs.* House, 61 Mich., 69.
Flack *vs.* Neill, *ubi supra.*
Hatton *vs.* Robinson, *ubi supra.*

Cady *vs.* Walker, 62 Mich., 157.
Mobile, &c., Co. *vs.* Yeates, 67 Ala., 164.
Fulton *vs.* Maccracken, 18 Md., 528.
Hager *vs.* Shindler, 29 Cal., 63.
Henderson *vs.* Terry, 62 Tex., 284.
Hibbard *vs.* Haughian, 70 N. Y., 54.

That which is proposed to be communicated to another party, as a foundation for bargaining, is not privileged.

Burnside *vs.* Terry, 51 Ga., 186.
See Chapman *vs.* Peebles, 84 Ala., 283.
1 Greenl. Ev., p. 328, note and cases.
Rice *vs.* Rice, 14 B. Mon., 335.

Where the question is as to the meaning of an act in which the attorney participated, there is no privilege.

Chapman *vs.* Peebles, 84 Ala., 283.

Where the assumed client is dead and the testimony would tend to make known and subserve his purpose it is admissible.

In re Layman, 40 Minn., 372.
Blackburn *vs.* Crawford, 3 Wall., 175.
Russell *vs.* Jackson, 15 Jur., 1117.
Wharton Ev., sec. 591.
See Greenough *vs.* Gaskell, 2 Myl. & K., 98.

And the privilege belongs to the client alone and his representatives as against third parties and not *inter sese.*

Gresley *vs.* Mousley, 2 Jur. N. S., 156.

In the light of these considerations, it is evident that no question of privilege arises in the case. There was no confidential communication, and no communication of any

kind by Mrs. Patten, except that she had not rendered her accounts and could not do so, because she had not the vouchers. This is a conceded fact—alleged and admitted—and is at the bottom of this controversy. Everything that was to follow, and did follow, that communication was intended to be laid before the complainants and the defendant Mrs. Glover, and was laid before them, as a basis of agreement. Even had Judge Hillyer been Mrs. Patten's attorney, the transaction could have been detailed by him, and his having acted only as a friend puts an end to all question in the premises. And Deal's suggestion (Rec., p. 70, fol. 101), acquiesced in by Mrs. Patten (Rec., p. 146, fol. 251), that her children should have a lawyer to represent them in going over the matter, disposes effectually of any supposed confidence in the matter.

If anything further on this point were needed it would be found at hand in the further testimony of Judge Hillyer. He says (Rec., p. 75, fol. 111):

"Well, as I stated before, upon that she, after talking it over, agreed that that amount was right; that *she had talked it over with the girls*, and they all agreed that that was right. I advised her in talking with the girls *to explain to them fully, as fully as she had to me*, everything about the property which she owned and with regard to all the other facts which might have an influence upon the question, *which she said she did*, and they agreed to it, and then the paper was drawn and given to her to get the signatures of the girls, which I understood she did."

This testimony of the witness is fully corroborated by the appellees, and would alone suffice to dispose of the question of confidence.

b. The objection to the testimony of the appellees is equally without support.

This objection is based upon the exception in sec. 858, R. S. U. S., which is as follows:

"In the courts of the United States no witness shall be excluded in any action on account of color, or in any civil action *because* he is a party to or interested in the issue tried: *Provided*, That in actions by or against executors, administrators, or guardians, in which judgment may be rendered for or against them, neither party shall be allowed to testify against the other as to any transaction with or statement by the testator, intestate, or ward unless called to testify thereto by the opposite party or required to testify thereto by the court."

(1.) The object of the exception in this and similar enactments in the several States has been frequently declared: it is "to avoid the injustice that might follow the admission of testimony in behalf of one whose adversary in the proceeding can neither contradict, correct, or explain it, if false or erroneous, nor himself testify to countervailing facts."

Woerner, Amer. Law of Admin., 829, 830, and cases cited.

"The reason of this exception is that when there is no mutuality there should not be admissibility—*i. e.*, when the lips of one party to a contract are closed by death, then the other party should not be heard as a witness. . . . [The] purpose is to provide that when one of the parties to a litigated obligation is silenced by death the other shall be silenced by law."

Wharton Ev., sec. 466.

"The object and purpose of these exceptions obviously are to put the two parties to a suit upon terms of substantial equality in regard to the opportunity of giving testimony."

Brown *vs.* Brightman, 11 Allen, 226.

"It was not the intention to prevent the contradiction of a living witness, but to prevent a living party to a trans-

action or communication from testifying to it himself when death has closed the mouth of the other party."

McKenna *vs.* Bolger, 37 Hun., 528.

(2.) And the courts will always look at the real parties and the real controversy to see whether they are within the purview of the statutes.

"In enforcing the object of the statute, courts will look at the substance of the cause, and observe through the forms of procedure who are the real parties whose interests are antagonistic."

Smith *vs.* Burnet, 35 N. J. Eq., 314.

The statute contemplates a suit in which the personal representatives of a deceased person are parties on one side.

Mower's appeal, 48 Mich., 459.

In this case, the controversy is really between the appellees on the one side and Mrs. Glover on the other. It has relation exclusively to conflicting claims between them on their mother's estate.

(3.) Where the opposite party to the suit was present and can testify as well as the survivor to what occurred, the survivor will not be excluded.

Jackson *vs.* Payne, 114 Pa. St., 80.

So when the occurrence was in the presence of a third person who testifies.

Ebert *vs.* Roth, 150 Pa. St., 261.

(4.) And to exclude the testimony the transaction sought to be testified to must be that upon which the action is based.

"It is only where the suit is upon the cause of action to which one party is dead that the other party is excluded to preserve mutuality."

Horner *vs.* Frazier, 65 Md., 10.

See Barlow *vs.* Buckingham, 68 Iowa, 169, 173.

"The contract must be actually in issue to exclude the survivor. If the point in controversy be not a contract which the suit is brought to enforce, then the witness is competent; otherwise the surviving party to a contract would be excluded in all cases on which the contract is even in the most collateral way *one of the proofs* in the case."

Wharton Ev., sec. 468.

See Lewis *vs.* Merritt, 98 N. Y., 206.

"To exclude a witness on account of the death of the other party, the matter offered in evidence must be something relating to the contract in issue, as to which the lips of the other party are sealed in death."

Ring *vs.* Jameson, 2 Mo. App., 593.

"The test of competency is the contract or cause of action in issue and on trial, not the fact to which the party is called to testify."

Granger *vs.* Bassett, 98 Mass., 468.

The exclusion does not extend to an inquiry incidental to taking an account, and not upon an issue which is the subject of a decree.

"The adjustment of an executor's account always precedes a settlement of the estate. . . . This adjustment is strictly and properly matter of accounting, in relation to which all parties in interest may testify."

Fairman *vs.* Bacon, 8 Conn., 418.

"The testimony offered is as to a transaction between the testator amd the executor offering himself as a witness. No judgment can be rendered in this action upon that transaction, however. The inquiry is incidental to taking the account, and not upon an issue which is the subject of a decree. Therefore the testimony does not appear to come within the statute."

D'Auxy *vs.* Soutter, 28 Fed. Rep., 733; 24 Blatch., C. 150.

The action must be one in which judgment may be rendered for one of the parties and against the other.

Potter *vs.* Nat'l B'k, 102 U. S., p. 164.

(5.) And the transaction must have been between the witness and the decedent. Testimony as to transactions between the decedent and another is not excluded.

Johnson *vs.* Johnson, 52 Iowa, 586.
Lines *vs.* Lines, 54 Iowa, 600.
Simmons *vs.* Simmons, 26 N. Y., 264.
Lobdell *vs.* Lobdell, 36 N. Y., p. 333.
Hildebrant *vs.* Crawford, 6 Lans., 502.

The fact of the payment to Mrs. Glover, which is alleged and denied, and so is strictly in issue, can, therefore, beyond doubt be testified to by the complainants.

(6.) The exclusion does not apply where the party would be competent without the enabling statute.

Angell *vs.* Hester, 64 Mo., 142.
Bates *vs.* Forcht, 89 Mo., 128.
Page *vs.* Whidden, 59 N. H., 507.
Pratt *vs.* Patterson, 81 Pa. St., 100.

The statute is an enabling one, and the exception does not make incompetent any witness previously competent.

Woerner, Amer. Law of Adm'n, 830, and cases.
Wharton Ev., sec. 476, and cases.
Horner *vs.* Frazier, 65 Md., 1, 10.

Prior to the enactment of the statute, how stood the law in this jurisdiction in relation to an executor's claim?

At common law, the executor might retain; but this was changed by act of Maryland of 1798, ch. 101, sub-c. 8, sec. 19, which provides that an executor's claim shall stand on equal footing with other claims of the same nature, and that the executor may not retain for his claim unless the same be passed by the orphans' court. This act being in

derogation of the common law is to be construed strictly. Its only effect as to the executor's being a witness was to make him, of necessity, a witness to the court instead of to himself in the first instance. For to say that it disqualified him as a witness would be to say, in effect, that in many instances the executor's claims should be extinguished outright. That such a result was never in remotest contemplation by the legislature is too plain for argument.

Sec. 858, R. S. U. S., therefore, does not affect an executor, for he was competent, nay, by force of the law he was in effect compellable, to testify in relation to his claim, unless he wished to abandon it. The statute of Maryland in terms provides for the executor's oath or affirmation (Act 1798, ch. 101, sub-c. 9, par. 14); and he was given a special and exclusive tribunal to which to present his claim; for the law having taken hold of what before then no court could act upon in the manner prescribed, and having conferred a peculiar power in relation thereto upon the orphans' court, its jurisdiction is clearly exclusive.

Green *vs.* Russell, 132 Mass., 540–'1.
Newell *vs.* West, 149 Mass., 528.

This is recognized by the order of the "orphans' court" on the petition of the complainants, which merely suspends further action on the petition until the matters raised by the answer "shall be first tried and determined in the appropriate tribunal;" and properly, because the statute is plain and peremptory: "No executor or administrator shall be allowed in his account for any claim by him discharged, unless he produce the claim, *passed by the orphans' court*, or proof or vouchers as aforesaid." (Act 1798, ch. 101, sub-c. 9, sec. 15.)

This case thus appears to be wholly without both the provisions and the purview of the statute.

The action is not brought upon the transaction of 1885;

the cause of action lies back of that transaction, which is only an incident by way of accounting: an incident favorable to the decedent and her estate and not the contrary. The postulate of the action is an indebtedness growing out of the relation of guardian and ward, an indebtedness admitted to exist; and the contention of the appellants really is that this admitted indebtedness is greater than the appellees claim it to be. The testimony of the appellees in nowise tends to establish the indebtedness, but only to show its amount, by way of reducing it, not increasing it.

As to the fact of a payment to Mrs. Glover, this, as already stated, is in no sense a transaction between the appellees and the decedent, but one between the decedent and a third person, Mrs. Glover, and so clearly without the statute. In addition, this payment and the payments to the appellees in 1887 are only a part, a continuation, of the transaction of 1885 and subject to the same consideration.

As respects the real parties to the controversy, they are not the appellees and their mother's estate, but the appellees and Mrs. Glover. According to Mrs. Glover, her mother's estate ought to pay both the appellees and herself; according to the appellees, the estate ought to pay them only.

There is presented, not a case of living witnesses testifying against the dead, but living witnesses confronting another living person capable and competent to testify as to the very matters deposed to by the appellees. Nay, it is a case in which that other living person, by her pleadings, has asserted her personal knowledge and challenged the appellees on questions of fact, and thereby in effect called them as witnesses. The case would not be so strong had Mrs. Glover contented herself with a mere denial of the allegations of the bill, as she might easily have done, as her answer under oath is waived; but she has seen fit to set up

affirmative matter of defence, thereby challenging its disproof.

The case is not one in which a decree can be rendered for one party as against the other; in any aspect of the case there must be a decree for the appellees, whether as *cestuis que trustent* legatees or creditors. That is the issue made by Mrs. Glover in the "orphans' court" and which ousted that court of its jurisdiction. The appeal to the equity side of the court is to ask it to declare in what character the appellees are to partake of their mother's estate. The bill claims for the appellees as creditors, and on that ground the appellees stand; but the bill also sets forth the contentions made by Mrs. Glover as to satisfaction, election, and trust, and negatives those contentions. The negative allegations are as much part of the bill and of the case as the positive allegations.

And the appellees as executors, being favored parties and having been only reduced by the Maryland statute from one grade of witnesses to another, were competent to prove their claims without the aid of the enabling part of section 858, Revised Statutes; they are accordingly not affected by the disabling part of that enactment.

It is submitted that due consideration of these suggestions, which were disposed of in a short paragraph (Rec., p. 394), would have constrained the court below to hold the testimony of the appellees as to the $45,000 transaction as competent as in respect to the payment to Mrs. Glover.

c. The testimony as to the admissions and other statements made by Mrs. Glover before she became executrix is of comparative unimportance, but the objection to its materiality is without point.

It is steadily overlooked that this is not an ordinary suit between an ordinary creditor of an estate and the executor of such estate. The proceeding is in effect ancillary to the presentation of the claims of the appellees to the "orphans'

court." It is a unique proceeding, rendered necessary by the imperfect provision of the statute respecting the passage by the "orphans' court" of a claim by an executor as an individual creditor of the estate which he is called upon to administer. It is safe to say that such a case as the present was not within the remotest contemplation of the legislature in forbidding an executor to retain for his debt. Of necessity, the "orphans' court," being of limited jurisdiction and forbidden in terms to extend its jurisdiction by any pretense (Act of Md., 1798, ch. 101, sub-c. 15, sec. 20), had to seek the aid of the equity court in the determination of certain questions *of law;* and all that this proceeding intends is to get such determination. The technical rules of evidence have therefore no application in the premises as between the parties concerned.

But, assuming that they have, the rule invoked under this specification of error applies only to admissions *tending to bind the estate.* The admissions in question tend only to bind Mrs. Glover and to relieve the estate by showing that she had been paid. The rule has therefore no application here.

6. The sixth specification under the first general assignment of error, namely, that upon the whole evidence the appellees are not entitled to the relief prayed or to *any* relief under the pleadings, can hardly be seriously urged if the bill is good, as it has been twice in effect found to be on demurrer, and as it must be held to be, for the one reason, if no other, that a confessed indebtedness between Mrs. Patten and the appellees existed in her lifetime, which has never been paid, and on the presentation of which to the "orphans' court" the present proceedings were required by the action of that court.

As to what is said in the brief for the appellants on this specification, it ought to suffice to say that an indebtedness in a trust relation is just as much an indebtedness as if ex-

isting in any other relation. And what is to be said of a *cestui que trust.* attempting to assert a trust when the trust has fallen upon himself by operation of law?

In view of the few and very simple facts of the case, it is deemed unnecessary to indulge in protracted argument on this specification.

(II.) The second general assignment of error is that the court below should have held the provision for the appellees in their mother's will a satisfaction of the debts asserted by the appellees.

The rule respecting satisfaction of debts by legacies has been much considered, both in England and in this country. It is lucidly stated and considered by Wœrner, American Law of Administration, pages 974–'5 (vol. II), as follows:

"A rule was established in the English equity courts that, where a debtor bequeaths to his creditor a legacy equal to or greater than the amount of his debt, it shall be presumed, in the absence of a contrary intent inferable from the will, that the legacy was intended to be in satisfaction of the debt. But this rule has been freely censured in England, and although well settled, yet courts dislike it so much as to lay hold of any minute circumstance to take a case out of its operation; and it is said that equity leans against legacies being taken in satisfaction of debts, though in favor of a provision by will being in satisfaction of a portion by contract. So also in this country. The American courts recognize the rule, but regret its existence, and lean to a contrary presumption whenever the testator's language, or even circumstances proved *aliunde*, enable them to disregard the rule."

It is called in *Hassell vs. Hawkins*, 4 Drew., 468, 470, a "false principle," and when considered in the light of its application in the adjudged cases is clearly seen to have no place in this case.

It is not much favored, and is made to yield to slight circumstances.

Edelen's Exec'rs *vs.* Dent's Adm'rs, 2 G. & J., 185.
Hall *vs.* Hall, 1 Bl. Ch., 130, 134–'5.
Spencer *vs.* Spencer, 4 Md. Ch., p. 464.
Gilliam *vs.* Brown, 43 Miss., 641.
Eaton *vs.* Benton, 2 Hill, 576.
Horner's Exec's *vs.* McGaughy, 62 Pa. St., 189.

A legacy is not a satisfaction unless very plainly shown either by the will itself or such a state of facts as leaves no doubt.

Waters *vs.* Howard, 8 Gill (Brantly's ed.), 262, notes & cases.
See Reynolds *vs.* Robinson, 82 N. Y., 103.

The legacy must equal or exceed the debt.

Owings *vs.* Owings, 1 H. & G., 485.
Reynolds *vs.* Robinson, 82 N. Y., pp. 107–'8.

And the debt must have been liquidated in whole.

Reynolds *vs.* Robinson, *ubi supra.*
Gilliam *vs.* Brown, 43 Miss., 641, 654, and cases cited.
Van Riper *vs.* Van Riper, 2 N. J. Eq., 1.

And contracted before execution of the will.

Crouch *vs.* Davis, 23 Gratt., 62, 93.
Heisler *vs.* Sharp, 44 N. J. Eq., 167.

And the rule does not apply where the legatee is one of several to whom equal amounts are bequeathed.

Crouch *vs.* Davis, *ubi supra.*

A devise of land will not satisfy a pecuniary debt.

Owings *vs.* Owings, *ubi supra.*
Partridge's Adm'x *vs.* Same, 2 H. & J., 63.
See Eaton *vs.* Benton, 2 Hill, 576, 581.

Nor will a gift of residue, because, the amount being uncertain, it *may be* less than the debt.

Lady Thynne *vs.* Earl of Glengall, 2 H. L., 131, 154, and cases cited.

And, as is evident from the above-cited authorities and the nature of the case, what is received by the creditor must, in order to be a satisfaction, in every case be a legacy and of a specific amount.

Tested by these adjudications, that which the appellees would receive from their mother's estate can by no possibility be held a satisfaction of their debts: (1), it is not specific in amount; (2), it is, therefore, uncertain whether it will equal, much less exceed, the debts; (3), there is nothing in the will to show that it was intended as a satisfaction or even to raise such a presumption; (4), the debts were not liquidated, either in whole or in part, before or at the time of the execution of the will; (5), the complainants are of several to whom equal amounts are supposed to have been bequeathed; (6), the supposed legacies are, in the main, only apparent devises of land; (7), what the complainants would receive if those devises were good would be by way of residue; and (8), what they may receive will be, in the main, by way of descent of land cast and not by way of legacy or even devise.

What the court below says on this point (Rec., pp. 395–'6, par. 5) is eminently applicable and sound.

(III.) The third general assignment of error is that the court below should not have found the delivery of bonds to the appellant Augusta a payment to her, "as this fact was not in issue under the amended bill."

This is an error on counsel's part. The seventh paragraph of the amended bill (Rec., p. 33, fols. 47–8) distinctly alleges the transfer of the bonds as a payment. Each of the

appellants demurred to this part of the bill (Rec., p. 38, fol. 54; 47, fol. 64). Afterwards, however, each appellant answered this part of the bill with a denial (Rec., p. 62, fol. 85; 63, fol. 86). The reason of this was that motions having been filed (Rec., p. 46, fol. 62; 50, fol. 68) to strike out the demurrers, because they were the same as those interposed to the original bill and overruled, and a motion having been made by the appellant Augusta (Rec., p. 51, fol. 69) for leave to amend her answer to the original bill, the demurrer of Mr. Glover was overruled and Mrs. Glover's motion denied (Rec., p. 63, fol. 87). Before the order to this effect was signed and on October 21, 1890, the additional answers were filed. Thereupon and on November 5, 1890 (Rec., p. 64, fol. 88), issue was duly joined by the appellees and the taking of testimony followed.

As respects the question whether the delivery of the bonds to Mrs. Glover was really intended to be and was in fact and in law a payment, the facts in relation to the execution of the paper of September, 1885, and the transfer and delivery of the bonds may, at the risk of some repetition, be briefly reviewed.

It is repeated that the transaction of September, 1885, is not set up as the appellees' *cause* of action; it is set up as an ascertainment, in point of fact, of the amount which each of the appellees was then entitled to demand of her mother, in virtue of an already existing cause of action. This ascertainment the appellees abide by as one by which they and the appellant Mrs. Glover are bound, not only because they assented to it, *but also* because, although Mrs. Patten did not sign it, she in fact assented to it and procured them to sign it for a good and valuable consideration moving to her, namely, the enabling her to settle her accounts as administratrix and guardian and thereby to secure the discharge of herself and her bondsmen.

It is attempted by the appellants to make it a question of

fact whether the transaction really partook of that character; but, apart from the recitals of the paper itself, the testimony leaves no doubt whatever on the subject.

While Mrs. Patten and her daughters were in Europe, she said that she thought it necessary to return to America to release her bondsmen; that they were getting impatient (Rec., pp. 155–'6, fol. 270). That was the occasion of her returning (Rec., pp. 229, 264). She said that she had to come back for that reason. (Rec., p. 264).

In the course of a conversation with Judge Hillyer after her return, "it came out" that she had not settled up her accounts in the Nevada probate court, and he told her that she ought to make a settlement with her children (Rec., p. 68). She said that as she had not kept her vouchers she could not make out an accurate account. He told her to "make out as fair an account as she could and settle it with the girls by an agreement," and advised the very form that the matter took in the paper of September, 1885. There was correspondence on the subject both between Mrs. Patten and Judge Hillyer, on the one hand, and Mr. Deal, of Nevada, with Mrs. Patten and Judge Hillyer, on the other. She finally said that she would do it. (Rec., pp. 72–'3.)

Judge Hillyer directed the matter, did the figuring and drew up the paper. Mrs. Patten afterwards told him that it had been signed. It was in duplicate and was intended to be sent to Mr. Deal, who was to see whether he could have her final account allowed in the probate court (Rec., p. 73, fol. 107). Hillyer and Mrs. Patten went into a calculation to ascertain the proper amount. (Rec., p. 75, fol. 110.)

Deal's letter to Hillyer was written June 10, 1885 (Rec., p. 70), and his letter to Mrs. Patten the same day (Rec., p. 71). Hillyer wrote her September 8, 1885 (Rec., p. 74), and again later, when the sum, $101,600, had been arrived at (Rec., p. 75). He identifies the paper, as put in evidence. (Rec., pp. 76, 77.)

Mrs. Patten agreed that the amount was right. She said

"that she had talked it over with the girls, and they all agreed that that was right." (Rec., p. 75.)

Each of the appellees testifies to the execution of the paper.

Mrs. Patten explained to them and Mrs. Glover the object of the paper; that she and Judge Hillyer had carefully gone over the estate, and the settlement had been got up by the two. She showed them various papers with figures on them and told them that they were to decide, and that they might get a lawyer at her expense, &c. Several papers figured out in Judge Hillyer's handwriting were shown them.

Mrs. Patten then left the room. Mrs. Glover took the paper and read it aloud three or four times, and then went over near the window and read it to herself. The appellees (except Helen) and Mrs. Glover then signed it (Rec., pp. 145–'6, 211, 230, 266). Mrs. Patten explained that the amount was that coming to them from their father's estate (Rec., pp. 230, 265). The reason that Helen was not asked to unite in the paper was that she was under age. (Rec., p. 211.)

As respects the payment to Mrs. Glover, the facts are equally plain.

Mrs. Glover repeatedly said that when she was married she would ask for her money; that she had a right to it and would ask for it; "that if this money was not paid over to her when she was married she would ask for it, as it was hers;" she said this repeatedly between the execution of the paper of 1885 and her marriage. (Rec., pp. 149, 211, 213–'14, 232, 266–'7.)

In February, 1887, the month in which Mrs. Glover was married, United States 4 per cent. registered bonds of 1907 (the sort Mrs. Patten had), varied in value from 128 to 129; they were worth about 128½ during almost the entire month. "During or about that time" Mrs. Patten consulted Mr. C. C. Glover, of Riggs & Co., about the price of bonds, as he testi-

fies. "She wanted to ascertain about what amount of bonds with the premium added would make up a sum somewhere in the neighborhood of $100,000, something over $100,000." She stated that "her purpose was to transfer these bonds to one of her daughters about to be married." He furnished her the necessary figures, somewhere in the neighborhood of $79,000. He does not remember the amount distinctly, "but it was an amount something over $100,000" (Rec., p. 83). She afterwards told him that she had transferred the bonds (84), and such is the conceded fact, as also is the fact that the transfer was made February 17, 1887. (See Exh. Treas'y Dep't, Rec., pp. 386–'7.)

At the time the paper of 1885 was executed Mrs. Patten thought of giving her daughters Government bonds in discharge of her obligation to them (Rec., p. 147, fol. 253). Three or four days before Mrs. Glover's marriage (Rec., pp. 147–'8, 214) Mrs. Patten asked the appellee Josephine to go down to the Treasury with her, as she wanted to give Mrs. Glover her bonds before she asked for them. Josephine estimated the amount mentally at $80,000, but Mrs. Patten said that they had told her at the bank that it was $79,000. Josephine said that it was a little over $100,000, and she, Mrs. P., had better make it a round $80,000. The transfer was made accordingly.

On returning home Josephine told Mrs. Glover of the transfer and saw Mrs. Patten give her the bonds. Mrs. Patten told Josephine that she had given Mrs. Glover the bonds in her father's name, saying, "I know your father in Heaven will see me with pleasure give you this money today." Mrs. Glover handed the bonds back to her mother, asking her to keep them, and subsequently Josephine sent them by registered mail to Mrs. Glover at St. Louis. (Rec., p. 150.)

Mrs. Patten also told Helen that she had given Mrs. Glover her bonds, saying, "I feel easier now;" that she did not wish Mrs. Glover to ask for them; that she gave them

before she could ask for them (Rec., p. 214), and she told Mary that she was going to get the bonds (Rec., p. 233). Edith heard the conversation between Josephine and Mrs. Glover after the transfer. She also saw Mrs. Patten hand Mrs. Glover a package and heard her say, "I thank God your father in Heaven can see me today give you your bonds," and saw Mrs. Glover hand them back with the remark, "Take them and keep them for me, as you have always done" (Rec., pp. 148, 267, 272-'3-'4). Afterwards Mrs. Patten said, "I feel easy now, because if Mr. Glover had asked for the money she would have taken the bonds." (Rec., pp. 149, 267.)

And after Mrs. Patten's death, both at the time of the reading of her will and on other occasions, Mrs. Glover admitted having received her share of her father's estate. (Rec., pp. 153, 155, 212, 213, 221, 222, 234, 268, 275, 276, 277, 278, 303, 304.) And Mrs. Patten said in October, 1887, that Mrs. Glover had had her portion (Rec., p. 105, fol. 173), had been paid. (Rec., p. 152, fol. 263.)

No explanation of the transfer of the bonds to Mrs. Glover as being anything else than a payment is offered, except the insinuation—for it is nothing more—that it was as a wedding present. Why Mrs. Patten should select so odd an amount is not attempted to be explained (and on this point Mr. C. C. Glover's testimony alone is conclusive); but if it be thought worth while to consider the insinuation in question, it will be most effectually disposed of by the only testimony in the record as to Mrs. Patten's attitude towards Mrs. Glover's marriage. (Rec., pp. 258, 260-'3.)

It is a highly important and significant fact that neither of the appellants testified in the case, and that they produced no witnesses whatever. If it be said that the appellants were incompetent, the answer is that the mouths of the appellees were closed to that objection by reason of themselves having taken the stand. It was in Mrs. Glover's power at least to deny the admissions and statements attributed to her, and

to give her version of the transaction of September, 1885, and the delivery of the bonds. Her silence is conclusive against her and in support of the claims of the appellees.

(IV.) It remains only to consider briefly a matter treated somewhat out of course in the brief for the appellants, viz., the "amended petition for probate," the subject of protracted cross-examination of the appellees and certain of their witnesses, and of extended treatment in the brief.

This amended petition for probate was formally offered in evidence (Rec., p. 347, fol. 654), but the nature of its contents does not appear from the transcript of record otherwise than in the cross-examination of the appellees and the witnesses Beall and Stewart (Rec., pp. 113–'4, 175, 180, 188, 219 *et seq.*, 243 *et seq.*, 311 *et seq.*). So much is said of it because it is supposed to militate against the position now taken by the appellees as creditors of their mother's estate.

The cross-examination of Senator Stewart (see especially pp. 311–'2, 313–'4, 316–'7 [fol. 585–'6]) shows the object of the amended petition: it was a not very happily conceived effort to lower the amount of the bond which would be required of the executrices. Senator Stewart's explanation, in itself complete, is only emphasized by the manner, as well as the substance, of the inquiries put to him and the others on cross-examination.

Respectfully submitted.

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